97599-0

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

NO. 78516-8-I
COURT OF APPEALS, DIVISION I

OLYMPIC VIEW WATER AND SEWER DISTRICT, a Washington municipal corporation; and TOWN OF WOODWAY, a Washington municipal corporation,

Respondent (Defendant-Appellants),

v.

RONALD WASTEWATER DISTRICT, a Washington municipal corporation

Petitioner (Plaintiff-Respondent),

and

KING COUNTY a Washington municipal corporation;

Petitioner (Defendant-Respondent)

and

SNOHOMISH COUNTY, a Washington municipal corporation; CITY OF SHORELINE, a Washington municipal corporation,

Defendants.

RONALD WASTEWATER DISTRICT'S PETITION FOR REVIEW

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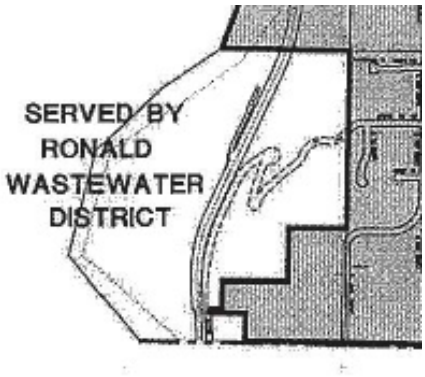
I. INTRODUCTION AND IDENTITY OF PETITIONER

In 1985, as part of a planned transfer of a sewer system from King County to the Ronald Wastewater District ("Ronald"), which King County and Ronald proposed pursuant to the express statutory authority in RCW 36.94.410 through.440, the King County Superior Court entered an order approving the sewer system transfer (the "1985 Order").[1] As authorized by RCW 36.94.420, the 1985 Order decreed that the geographic area known as the Point Wells Service Area[2] "shall be annexed to and become a part of the [Ronald]" as of January 1, 1986.

Since that date, Ronald has continuously provided sewer service to the Point Wells Service Area, and Ronald is the only sewer district that has ever provided sewer service to the area.[3] Ronald is also the only sewer district with a formally adopted, approved comprehensive sewer plan authorizing it to serve future new development that is anticipated to occur in the Point Wells Service Area.[4] In the decades since 1986, Ronald adopted a series of comprehensive sewer plans to ensure that sewer service would be available to new development in the area.[5] Ronald's sewer plans were approved by all relevant agencies, including Snohomish County, and those sewer plans were incorporated into the comprehensive

[1] CP 1082–96. *See also* Section IV.A, *infra* (discussing RCW 36.94.410 through .440).
[2] The Point Wells Service Area is depicted in the Appendix at pages A-215 through A-223.
[3] *See* CP 1250–1398; CP 842–83. *See also Ronald Wastewater Dist. v. Snohomish Cty.*, GMHB No. Case No. 16-3-0004c, Final Decision and Order (Jan. 25, 2017) at A-226 through 32 (hereinafter "the "2017 GMHB Order"), Appendix at pages A-224 through 58.
[4] *See id*. *See also* Sections I and IV.B, *infra.*
[5] *Id*.

land use plan adopted by Snohomish County pursuant to the Growth Management Act ("GMA").[6] Through the late 2000s, Ronald was the only entity that claimed any right to provide sewer service to the area, or expressed any interest in doing so, and none of the parties raised any objection to Ronald's provision of sewer service to the Point Wells Service Area.[7] And in 2007, Olympic View affirmatively consented to Ronald's provision of sewer service to the Point Wells Service Area when it adopted, by resolution, a service area map in its 2007 comprehensive sewer plan recognizing the entire area as "served by Ronald Wastewater District," as follows:[8]



The core controversy in this case involves Olympic View's attempt to effectively withdraw that consent, to reverse its longstanding recognition of Ronald as the sewer provider to the Point Wells Service

[6] *Id*.
[7] *Id*.
[8] CP 1448 (service area map from Olympic View's 2007 comprehensive sewer plan) (Appendix at page A-221); CP 7110 (letter acknowledging that 2007 plan was adopted "by resolution"); RCW 57.16.010(7) ("Any general comprehensive plan or plans shall be adopted by resolution . . ."). Notably, that 2007 service area map was adopted after Olympic View engaged in extensive discussions with Ronald to confirm which areas would be served by each district. CP 7090–7110; CP 2992–3032. *See also* Section IV.A, *infra;* 2017 GMHB Order, Appendix at pages A-226 through A–232.

Area, and to reposition itself as the new provider of sewer service to the area.[9] These efforts began in 2014, when Olympic View proposed an amendment to its 2007 comprehensive sewer plan indicating that Olympic View planned to build new infrastructure and take over sewer service in the Point Wells Service Area (the "Olympic View Amendment").[10] When Snohomish County approved the Olympic View Amendment, Ronald filed the declaratory judgment action that led to this appeal, and it also filed a parallel action with the Growth Management Hearings Board ("GMHB").

In 2017, the GMHB ruled that Snohomish County's approval of the Olympic View Amendment was a "*de facto* amendment to the Snohomish County Comprehensive Plan" because it was inconsistent with the County's adopted land use plan, which "relies on Ronald to comply with GMA requirements to ensure adequate public wastewater facilities *for Point Wells*" and relies on Olympic View Water & Sewer District "in portions of Snohomish County *other than Point Wells*."[11] That 2017 ruling by the GMHB is now final, conclusive, and binding on Snohomish County, Olympic View, and the Town of Woodway ("Woodway").[12] As a result of the GMHB's ruling, Snohomish County repealed its approval for the Olympic View Amendment, and Ronald remains the only sewer district with an approved comprehensive sewer plan authorizing it to

[9] *See* Section IV.B *infra;* 2017 GMHB Order, Appendix at pages A-226 through A-232.
[10] CP 1495–1538. *See also* Section IV.B, *infra;* 2017 GMHB Order, Appendix at pages A-226 through A-232.
[11] 2017 GMHB Order, Appendix at pages A-240 through A-242 (emphasis in original).
[12] *See* Ronald's Statement of Additional Authorities at 45–48 (providing copies of Superior Court judgments dismissing, with prejudice, all appeals of the GMHB's orders) (Appendix at pages A-269 through A-377).

provide sewer service to the Point Wells Service Area.[13]

In the meantime, the King County Superior Court issued a 2017 order in Ronald's declaratory judgment action (the "2017 Order") that affirmed the validity and binding effect of the 1985 Order annexing the Point Wells Service Area to Ronald's corporate boundary.[14] In 2019, Division I of the Court of Appeals ("Division I") reversed the 2017 Order, holding that the portion of the 1985 Order that annexed the Point Wells Service Area to Ronald's corporate boundary was "void" because the Superior Court in 1985 lacked subject matter jurisdiction to approve an annexation of that geographic area.[15]

That holding was erroneous, and it warrants review by this Court for two reasons: because it conflicts with other appellate decisions, and because this Petition for Review ("Petition") involves issues of substantial public interest. For these reasons, as further explained below, Ronald respectfully asks the Court to accept review of the Court of Appeals decision terminating review designated in Section II of this Petition.

II. COURT OF APPEALS DECISION

On July 1, 2019, Division I filed an opinion reversing the 2017 Order and remanding to the Superior Court for an order granting, in part, the summary judgment motion filed by Woodway (the "Opinion,"

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[13] *See Ronald Wastewater Dist. v. Snohomish Cty*, GMHB No. Case No. 16-3-0004c, Order Finding Compliance (Aug. 13, 2018) (GMHB decision finding compliance after repealed its approval for the Olympic View Amendment), Appendix at pages A-263 through A-268).
[14] CP 8022–45.
[15] *See* Section II, *infra*.

Appendix at pages A-001 through A-033). On July 22, 2019, Ronald filed a Motion for Reconsideration asking Division I to modify or clarify the Opinion, or to allow supplemental briefing ("Ronald's Motion," Appendix at pages A-034 through A-197). The City of Shoreline ("Shoreline") also filed a Motion for Reconsideration ("Shoreline's Motion," Appendix at pages A-198 through A-212). On July 31, 2019, Division I filed separate orders denying Ronald's and Shoreline's motions without further comment (the "Reconsideration Orders," Appendix at pages A-213 through A-241). Ronald seeks review of the Opinion and the Reconsideration Orders (collectively, "the Court of Appeals Decision")[16]

III. ISSUES PRESENTED FOR REVIEW

This Petition presents the following issues for review:

1. Whether Division I's holding that the King County Superior Court lacked subject matter jurisdiction to approve Ronald's 1986 annexation of the Point Wells Service Area conflicts with other appellate decisions, including decisions holding: (i) that collateral attacks on annexation actions should not be allowed; and (ii) that courts should be careful not to confuse a court's subject matter jurisdiction with its authority to rule in a particular way, which can open the door to improper collateral attacks;

2. Whether Division I's approach to statutory construction, including its extension of the "absurd results" canon to the facts of this case, conflicts with other appellate decisions holding that courts must use that

[16] Shoreline has authorized Ronald to include a statement in this Petition indicating that Shoreline supports Ronald's request for review by this Court.

canon "sparingly" because it disregards the words chosen by the legislature and substitutes language chosen by the courts; and

3. Whether Division I's substantive analysis of the relevant sewer district statutes conflicts with *Alderwood Water District v. Pope & Talbot, Inc*., which Division I cited to support its analysis, and with the relevant statutory framework and legislative history.[17]

IV. STATEMENT OF THE CASE

A. Legislative history surrounding changes to sewer district boundaries.

In 1971, the legislature passed Engrossed Substitute Senate Bill 542 ("ESSB 542"), "AN ACT . . . providing that sewer districts may include within their boundaries parts of more than one county."[18] Section 1 of ESSB 542 amended an existing statute to allow sewer districts to "include within their boundaries portions or all of one or more counties." In 1975, the legislature passed Senate Bill 2945 ("SB 2945"), which amended existing law to eliminate a restriction that had formerly prohibited cross-county annexations, as follows:

> Two or more sewer districts, adjoining or in close proximity to (~~and in the same county with~~) each other, may be joined into one consolidated sewer district. The consolidation may be initiated in either of the following ways . . .[19]

Also in 1975, the legislature passed Engrossed Substitute Senate

[17] *See* Opinion, Appendix at pages A-17 through A-18 (citing *Alderwood Water Dist. v. Pope & Talbot, Inc*., 62 Wn.2d 319, 321–22, 382 P.2d 639 (1963)).
[18] CP 1781–91.
[19] CP 1793–95.

Bill 2737 ("ESSB 2737"), which amended a variety of statutes related to sewer and water service by counties and districts.[20] Sections 7-11 of ESSB 2737, codified at RCW 36.94.310 through 36.94.350, authorized sewer districts (and other municipal corporations) to transfer water and/or sewer systems to counties. Section 7 of ESSB 2737 limited such transfers to a transfer from a district "to the county within which all of its territory lies," effectively excluding multi-county districts from the bill's scope.

In 1981, the legislature passed Substitute House Bill 352 ("SHB 352"), which established the principle that "the first in time is the first in right where districts overlap."[21] This principle was intended to help "reduce the duplication of service and the conflict among jurisdictions." SHB 352's "first in time" provisions did not prohibit annexations of territory that would result in overlapping district boundaries; instead, they were focused on the provision of service, prohibiting the second district from actually *providing service* without the consent of the first district.[22] The legislative history behind SHB 352 confirms that this "first in time" framework granted exclusive service area rights based on which district was the first to *provide service* in a particular area, not the first to establish territory.[23]

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[20] CP 1797–1803.
[21] CP 1805–11.
[22] *See id*.
[23] *See* Ronald's Motion (Appendix at pages A-044 through A-047 (citing legislative history of SHB 352). For example, one bill report states that "the first district to provide a particular utility service in the area has the exclusive right to provide such service"; testimony during a hearing on the bill states that "the district first providing the water or sewer service is the one that retains the ability to provide it"; and the final bill report

In 1982, the legislature passed House Bill 1145 ("HB 1145"), titled "Multicounty Districts," which took several additional steps to authorize sewer districts with territory in more than one county.[24] In Section 3 of HB 1145, the legislature amended existing law to eliminate a restriction that had formerly prohibited cross-county annexations:

> The territory adjoining or in close proximity to (~~and in the same county with~~) a district may be annexed to and become a part of the district in the following manner . . .[25]

Two years later, in 1984, the legislature adopted Substitute House Bill 1127 ("SHB 1127"),[26] the legislation that authorized the King County Superior Court to enter the 1985 Order. Now codified at RCW 36.94.410 through .440, SHB 1127 authorized counties to transfer sewer systems to sewer districts—without requiring a public vote, and without review by the Boundary Review Board ("BRB"). Unlike ESSB 2737, which had limited sewer system transfers to those from a district "to the county within which all of its territory lies," SHB 1127 did not include any express geographic limitation on transfers or annexations. SHB 1127 stated that sewer systems "may be transferred from that county to a water-sewer district *in the same manner* as is provided for the transfer of those functions from a water-sewer district to a county in RCW 36.94.310 through 36.94.340"—in other words, following the transfer process

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states that "the first district to provide a particular service in the common territory has the exclusive right to continue providing the service." *See id.*

[24] CP 1813–36. *See also* CP 1838–61 (legislative history).

[25] CP 1815.

[26] CP 1863–64. *See also* CP 1866–1908 (legislative history).

established in RCW 36.94.310 through 36.94.340. Section 1 of SHB 1127 included no language suggesting that any *substantive restriction* from RCW 36.94.310 through 36.94.340 should be incorporated into SHB 1127. Also unlike ESSB 2737, which had merely authorized the transfer of a sewer system, SHB 1127 took the additional step of authorizing petitioning counties and districts to elect to have territory "deemed annexed" to a district as part of a judicially-approved sewer system transfer from a county to a district, based on the "area served by the system."[27] That section of SHB 1127 also included no express geographic limitation. Section 5 of SHB 1127 provided that "[a]nnexations of territory to a water or sewer district pursuant to sections 1 through 4 of this act shall not be reviewed by a boundary review board."[28]

Before the legislature adopted SHB 1127, legislators heard testimony explaining that the bill was intended to help King County with its planned divestment of sewer collection operations in various geographic areas, and that King County had started providing sewer service to the areas in question because no other sewer district or other entity in the area was willing to do so.[29] Legislators also heard testimony confirming that, since King County had conducted an exhaustive survey of districts to determine which were interested in serving the areas in

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[27] *See* CP 1863 (emphasis added).
[28] *Id*.
[29] *See* Ronald's Motion, Appendix at page A-048 (citing Audio recordings of Hearings before House Local Government Committee (Jan. 17, 1984), available at: https://www.digitalarchives.wa.gov/Record/View/5811CD17A140C4B17D327CEA2A0EE439 (hereinafter the "1/17/84 Audio")).

question, there was little potential for conflict over who would serve each area.[30] The testimony and the legislators' discussions indicated that the Superior Court hearing would provide a "safeguard" and a substitute for BRB review, and that if there were disputes between districts about "which district would assume the responsibility" of serving the area, then such disputes "will be heard" during the Superior Court hearing.[31]

The following year, in 1985, the legislature adopted Senate Bill 1232 ("SB 1232"),[32] a bill expressly linked to SHB 1127 whose purpose was to "clarify overlapping jurisdictions."[33] As discussed in the Opinion, former RCW 56.04.070 (1985)[34] generally prohibits overlapping sewer district boundaries, but what the Opinion fails to discuss is that former RCW 56.04.070 includes two exceptions to the general prohibition on overlapping boundaries, and one of those exceptions, added by SB 1232, is for overlaps created by annexations pursuant to RCW 36.94.420.[35] The bill reports on SB 1232 described the transfer and annexation process authorized by RCW 36.94.410 through .440, stating that "such a transfer is deemed to constitute an annexation of the area served by the sewer or water system"—repeating the unique "area served" language from RCW 36.94.420.[36]

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[30] *Id*. (citing 1/17/84 Audio).
[31] *Id*.
[32] *See* Ronald's Motion, Appendix at page A-049 through A-050 (citing SHB 1232 and legislative history materials).
[33] *See id*.
[34] *See* Opinion, Appendix at page A-017 (citing LAWS OF 1941, ch. 210, § 5 (1985) (hereinafter "former RCW 56.04.070")).
[35] *See* Ronald's Motion, Appendix at page A-049 through A-050.
[36] *See id.*

In 1990 and 1991, the legislature passed two bills that collectively enacted the Growth Management Act ("GMA"), Chapter 36.70A RCW.[37] The GMA, like SHB 352 (passed in 1981), represented an effort by the legislature to reduce conflicts among jurisdictions and other inefficiencies that result from uncoordinated and unplanned growth.[38] While this is not a GMA case, Title 57 RCW requires sewer districts to adopt comprehensive sewer plans that are consistent with the GMA plans of the counties and cities in which they provide sewer service.[39]

Thus, comprehensive sewer plans adopted by sewer districts took on greater legal significance during the 1990s. That was particularly true after the legislature adopted Substitute Senate Bill 6091 ("SSB 6091") in 1996.[40] SSB 6091 addressed the issue of overlapping sewer district corporate boundaries by granting "first in time" service area rights to districts that first *provided service* in an overlapping corporate boundary area or *planned to make service available* in the overlapping area.[41]

B. Events leading to the Court of Appeals Decision.

Division I's recitation of the events leading up to its decision is generally accurate, but it is incomplete, and it omits important events that

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[37] *See* Richard L. Settle & Charles G. Gavigan, *The Growth Management Revolution in Washington: Past, Present, and Future*, 16 U. PUGET SOUND L. REV. 867, 871–72 n.20–21 (1993).
[38] *See* CP 1805, 1807–10; RCW 36.70A.010 (GMA's legislative finding regarding "uncoordinated and unplanned growth").
[39] RCW 57.16.010(2), (7); RCW 57.02.040(3)– (4). Comprehensive sewer plans may not provide for the extension or location of facilities that are inconsistent with the GMA requirements of RCW 36.70A.110. RCW 57.16.010(7).
[40] CP 1910–16.
[41] CP 1914, 1916.

happened between 2005 and 2015, when all of the parties formally recognized Ronald as the exclusive provider of sewer service to the Point Wells Service Area.[42] As explained below, the parties recognized and reinforced Ronald's status as the designated sewer service provider to the area in several important ways during those years.

From 2005 through 2007, representatives of Ronald and Olympic View (including Board members) engaged in extensive discussions regarding future service to the Point Wells Service Area, and they agreed that Ronald would continue to be the exclusive provider of sewer service to the entire area.[43] In 2007, after a question arose regarding whether voters in Snohomish County could vote for Ronald's commissioners, Snohomish County issued a formal legal opinion confirming that Ronald's corporate boundary includes the Point Wells Service Area.[44] In that opinion, Snohomish County's Deputy Prosecuting Attorney cited discussions with Olympic View's manager and concluded that, "by virtue of the [1985 Annexation Order], the portion of Snohomish County in question was annexed into the Ronald Sewer District."[45] Ronald's

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[42] *See* Opinion, Appendix at pages A-002 through A-012. Ronald does dispute Division I's characterization of certain evidence, such as the correspondence between Olympic View and the Seattle Water Department. *See id.* at 5, n.7 (stating that a letter from the Seattle Water Department "did not address sewer service," but giving no weight to the fact that Olympic View's response to that letter stated that Olympic View had "no objections to permitting [King County DPW] to serve the lift station" in the Point Wells Service Area—a clear reference to a "lift station" for sewer service). Ronald also adopts and incorporates the description of events leading up to the Court of Appeals Decision from the Statement of the Case in the Petition for Review filed by King County.

[43] CP 7090–110; CP 2992–3032.

[44] CP 4339–55.

[45] CP 4341–42.

Commissioners then passed a resolution reaffirming that Ronald's corporate boundary includes the Point Wells Service Area.[46] The resolution also approved a 2007 amendment to Ronald's sewer plan that similarly reaffirmed Ronald's plans to make service available to future development in the Point Wells Service Area.[47] Also in 2007, Olympic View adopted a sewer plan, via resolution, that complemented Ronald's 2007 plan and recognized the entire Point Wells Service Area as "served by Ronald Wastewater District."[48] Snohomish County formally approved Ronald's and Olympic View's 2007 comprehensive sewer plans pursuant to Title 57 RCW, and those sewer plans were incorporated into the County's GMA land use plans.[49]

In 2009, the Snohomish County Council approved a request by BSRE Point Wells, LLP ("BSRE"), the owner of the former Chevron property comprising the waterfront portion of the Point Wells Service Area, to re-designate the property from "Urban Industrial" to "Urban Centers."[50] BSRE proposed this re-designation as part of its plan to redevelop Point Wells into a mixed-use urban center development (the "Urban Center Development").[51]

In 2010, Ronald approved its 2010 sewer plan, which reflected Ronald's most detailed effort to plan for future sewer service to Point

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[46] CP 1321–22.
[47] *Id.*
[48] CP 1448.
[49] CP 1466–68, 1918–30.
[50] *See* CP 5889–920, 5923–36, 5941–95; *Town of Woodway v. Snohomish Cty.*, 180 Wn.2d 165, 170, 322 P.3d 1219 (2014).
[51] *Id.*

Wells, and was, according to Snohomish County, based upon the "best available information" about the Urban Center Development.[52] Ronald's 2010 sewer plan unambiguously designates the Point Wells Service Area as part of Ronald's sewer service area, and it clearly discloses Ronald's plans to make service available to the Urban Center Development and other future development in the service area.[53] The Snohomish County Council approved Ronald's 2010 sewer plan, adopting findings stating that the 2010 Ronald Plan was consistent with the County's Comprehensive Plan in general and with the Urban Center designation in particular,[54] and the County incorporated Ronald's 2010 plan (along with Olympic View's 2007 plan) into the County's GMA land use plan.[55] Also in 2010, Ronald issued the certificate of sewer availability for the Urban Center Development.[56] It is undisputed that Ronald has now invested over $1.3 million in the Point Wells Service Area and owns property in Snohomish County valued at over $20 million.[57]

In 2014, the Snohomish County parties reversed course and began to challenge Ronald's right to serve the Point Wells Service Area.[58] First,

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[52] CP 5935.
[53] Ronald's 2010 sewer plan includes a capital facilities plan with two alternative capital projects proposed by Ronald for the specific purpose of accommodating expected sewer demand from the Urban Center Development, with estimated costs of $2.02 million and $4.2 million and construction schedules to be "coordinated with development of the Point Wells area of the District." CP 843–83.
[54] CP 5926–39.
[55] *Id*. No challenges to Ronald's 2010 plan were filed.
[56] CP 5924–25.
[57] *See* CP 6075; CP 3232. As a result of this controversy, Ronald has also been forced to incur substantial legal fees to defend its rights in the Point Wells Service Area.
[58] The Snohomish County parties did this after Ronald rejected Olympic View's efforts to buy Ronald's Lift Station #13, which serves the Point Wells Service Area, and

in 2014 proceedings before the BRB in which Shoreline sought to implement its long-established plans to incorporate and "assume" Ronald into Shoreline as a city-owned utility, the Snohomish County parties questioned whether the Point Wells Service Area was lawfully included within Ronald's corporate boundary.[59] Then, in 2015, Olympic View proposed the Olympic View Amendment, which prompted Ronald to file this action and its parallel GMHB action.

V. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

A. The Court of Appeals Decision conflicts with other appellate decisions.

As explained in the sections below, the Court of Appeals Decision conflicts with other appellate decisions, including numerous Supreme Court decisions and published decisions of the Court of Appeals that address the jurisdictional, jurisprudential, and substantive issues in this case. Review by this Court is therefore warranted pursuant to RAP 13.4(b)(1)–(2).

1. Division I's holding on subject matter jurisdiction conflicts with other appellate decisions.

Division I's holding that the King County Superior Court lacked subject matter jurisdiction to approve Ronald's 1986 annexation of the Point Wells Service Area conflicts with other appellate decisions holding that collateral attacks on annexations should not be allowed. Courts in Washington State have long recognized the importance of finality in

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Shoreline's purchase of the land underlying Lift Station #13, which thwarted Woodway's effort to condemn that property. *See* CP 3239–40.

[59] CP 5372–463.

annexations, with this Court holding in decisions dating from 1894 through 1961 that a challenge to an annexation proceeding "can be done only in a direct proceeding"[60] and "cannot be questioned in a collateral proceeding."[61] Those Supreme Court decisions are still good law, and the Court of Appeals Decision clearly conflicts with them: its central holding is that Ronald's 1985 annexation of the Point Wells Service Area *can*, in fact, be questioned and even invalidated in this collateral proceeding.

Division I's holding on subject matter jurisdiction also conflicts with appellate decisions holding that courts should be careful not to confuse a court's subject matter jurisdiction with its authority to rule in a particular way. This Court and the Court of Appeals have repeatedly cautioned other courts not to fall into the trap of confusing a court's subject matter jurisdiction with its authority to rule in a particular way—in part because such confusion can open the door to improper, delayed collateral attacks.[62] In this case, as more fully explained in the Petition for Review filed by King County,[63] Division I fell into that trap when it

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[60] *Frace v. City of Tacoma*, 16 Wash. 69, 70, 47 P. 219 (1896).
[61] *Kuhn v. City of Port Townsend*, 12 Wash. 605, 611–13, 41 P. 923 (1895); *see also State ex rel. Town of Mercer Island v. City of Mercer Island*, 58 Wn.2d 141, 148, 361 P.2d 369 (1961) (municipal corporation may not collaterally attack annexation); *Dixon v. City of Bremerton*, 25 Wn.2d 508, 510, 171 P.2d 243 (1946) (individual may not collaterally attack annexation); *Ferguson v. City of Snohomish*, 8 Wash. 668, 671, 36 P. 969, 970 (1894). *See also* 2A McQuillin Mun. Corp. § 7:42 (3d ed.) (section titled "Collateral attacks on proceedings") ("[A]fter the annexation has been consummated, the general rule is that collateral attacks on the proceedings will be denied, especially after a lapse of considerable time.") (citing *Dixon*, *Frace*, and *Kuhn*).
[62] *See Id.*
[63] *See* King County's Petition for Review at 10–17 (citing, *inter alia*, *Marley v. Dept. of Labor & Industries*, 125 Wn.2d 533, 541–43, 886 P.2d 189 (1994), *Housing Authority of City of Seattle v. Bin*, 163 Wn. App. 367, 376, 260 P.3d 900 (2011)).

confused the Superior Court's specific authority to approve Ronald's annexation of the Point Wells Service Area with its general subject matter jurisdiction over the proceeding that led to the 1985 Order. To the extent this Court believes that collateral attacks on annexations should *ever* be allowed in Washington State, the Court should look to guidance from other states,[64] where courts reviewing judicial annexation proceedings have been careful not to allow the improper de novo review of a trial court's findings in a collateral proceeding.[65] As explained below, that is precisely what Division I did here, warranting review by this Court.

2. Division I's approach to statutory construction conflicts with other appellate decisions.

Division I recited the standard "plain language" rules in the Opinion, but its interpretation of the relevant statutes was based primarily on the canon of "absurd results," which holds that courts should avoid a literal reading of a statute that produces "absurd results."[66] The Supreme Court[67] and the appellate courts[68] have emphasized that courts must be

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[64] *See, e.g.*, *People ex rel. Graf v. Vill. of Lake Bluff*, 206 Ill. 2d 541, 555–56, 795 N.E.2d 281 (2003).
[65] *Id*.
[66] *See* Opinion, Appendix at pages A-015 through A-016 (referencing the "absurd results" canon and citing *State v. Engel*, 166 Wn.2d 572, 579, 210 P.3d 1007 (2009)); *see id*. at 24–26 (stating that "it would be unreasonable" to apply the plain meaning of RCW 36.94.420).
[67] *See, e.g.*, *Columbia Riverkeeper v. Port of Vancouver USA*, 188 Wn.2d 421, 443 P.3d 1031, 1043 (2017) (declining to apply the canon because "carefully limiting discussion in executive discussion is far from absurd"); *Anthis v. Copland*, 173 Wn.2d 752, 765, 270 P.3d 574 (2012) (stating that the "absurd results" canon should be applied only when "it is required to make the statute rational or to effectuate the clear intent of the legislature," and declining to apply it in that case "absent express statutory language to the contrary").
[68] *See, e.g.*, *Seattle Hous. Auth. v. City of Seattle*, 3 Wn. App.2d 532, 544, 416 P.3d 1280 (2018) ("It is true that we should not so interpret a statute as to reach an absurd result, but neither should we make an absurd interpretation to reach a desired result.") (quoting

cautious to use the "absurd results" canon "sparingly" because it disregards the words chosen by the legislature and substitutes language chosen by the courts.

As the Supreme Court explained in *Five Corners Family Farmers*:

> Application of the absurd results canon, by its terms, refuses to give effect to the words the legislature has written; it necessarily results in a court disregarding an otherwise plain meaning and inserting or removing statutory language, a task that is decidedly the province of the legislature . . . "[A] court must not add words where the legislature has chosen not to include them." . . . This raises separation of powers concerns. Thus, in *State v. Ervin*, 169 Wn.2d 815, 824, 239 P.3d 354 (2010), we held that if a result "is conceivable, the result is not absurd."[69]

The "absurd results" canon "must be applied sparingly, consistent with separation of powers principles."[70] The canon should be invoked only to "'prevent *obviously* inept wording from thwarting *clear* legislative intent,' not when it merely appears that a different policy choice might

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Cooper's Mobile Homes, Inc. v. Simmons, 94 Wn.2d 321, 326, 617 P.2d 415 (1980)); *State v. Granath*, 200 Wn. App. 26, 38, 401 P.3d 405, 411 (2017), *aff'd*, 190 Wn.2d 548, 415 P.3d 1179 (2018) (the "absurd results" canon "must be applied sparingly, consistent with separation of powers principles" and "'will be invoked to 'prevent obviously inept wording from thwarting clear legislative intent,' not when it merely appears that a different policy choice might have been preferable") (quoting *In re Dependency of D.L.B.*, 186 Wn.2d 103, 119, 376 P.3d 1099 (2016).

[69] *Five Corners Family Farmers v. State*, 173 Wn.2d 296, 311, 268 P.3d 892 (2011) (declining to apply the canon because "[i]t is conceivable that the legislature intended to allow permit-exempt withdrawals of groundwater for stock-watering purposes without a specified quantity") (quoting *Rest. Dev., Inc. v. Cananwill*, *Inc*., 150 Wn.2d 674, 682, 80 P.3d 598, 601 (2003). *See also State v. Ervin*, 169 Wn.2d 815, 824, 239 P.3d 354 (2010) (citing Black's Law Dictionary 10 (9th ed. 2009) (defining "absurdity" as involving an interpretation that "the drafters could not have intended")).

[70] *State v. Granath*, 200 Wn. App. 26, 38, 401 P.3d 405, *aff'd*, 190 Wn.2d 548, 415 P.3d 1179 (2018) (declining to apply the canon because the wording in question was "not obviously inept").

have been preferable."[71] Even in the case of an obvious legislative omission, this Court "has exhibited a long history of restraint in compensating for legislative omissions," and the only type of omission the courts will correct is one that makes the statute "entirely meaningless."[72] Similarly, Division I has held in other cases that, where the legislature's wording "is not *obviously inept*," the canon of "absurd results" may not be applied.[73]

In the instant case, however, Division I applied a different standard when interpreting the sewer district legislation surrounding Ronald's annexation of the Point Wells Service Area. It did not exercise caution and first ask whether it was "conceivable"[74] that the legislature's plain language was intended to authorize annexations such as Ronald's 1986 annexation of the Point Wells Service Area (even if such annexations might be debatable as a matter of policy), as opposed to being "obviously inept" language that thwarted "clear legislative intent,"[75] or the type of legislative error that would render the statute "entirely meaningless."[76] Instead, Division I skipped these precautionary steps and concluded—based on unsupported assumptions about the statutory framework—that it would have been "absurd" for the legislature to authorize the type of

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[71] *Granath*, 200 Wn. App. at 38 (quoting *In re Dependency of D.L.B.*, 186 Wn.2d at 119)(emphasis added).
[72] *State v. Delgado*, 148 Wn.2d 723, 730, 63 P.3d 792 (2003) (quoting *State v. Taylor*, 97 Wn.2d 724, 728, 649 P.2d 633 (1982)).
[73] *Granath*, 200 Wn. App. at 38 (emphasis added).
[74] *Five Corners Family Farmers*, 73 Wn.2d at 311.
[75] *Granath*, 200 Wn. App. at 38.
[76] *Delgado*, 148 Wn.2d at 730.

annexation that Ronald undertook in 1985.[77]

In light of the legislative history, Ronald believes that not only was Division I wrong when it rejected the result sought by Ronald in annexing the Point Wells Service Area as "absurd," but that the opposite is true: that, in fact, the result Ronald sought in 1985 was most likely the legislature's specific intention. At a minimum, however, it is undeniably "conceivable" that the legislature could have intended to authorize the type of annexation Ronald undertook here, particularly in light of the legislature's nuanced approach to allowing overlapping sewer districts and creating a first-in-time-to-serve framework to resolve any disputes in overlapping areas. Moreover, there is no indication in the statutory text or legislative history that the legislature ever intended to protect the right of a sewer district do what that Olympic View has done here: first, decline to provide service to a portion of its service area; then, sit on its rights while a different district provides sewer service to that area, adopts formal plans to serve future development in the area, and makes major investments in the area; then, consent to that district's service to the area by adopting a comprehensive sewer plan showing the area as outside of its service area and within that district's service area; and then—decades later—assert it has the right to displace the other district and take over service in the area. If any result is inconceivable, it is what Olympic View seeks today, not

[77] The reasons why Division I's assumptions were unsupported were explained in Ronald's Motion for Reconsideration. *See* Ronald's Motion, Appendix at pages A-050 through A-056.

what Ronald sought in 1985. Thus, even if the Court believes the result Ronald seeks is an "unlikely" result, the result that Olympic View seeks must be rejected as *even less likely*.[78]

For these reasons, Division I should have applied the "plain language" rules rather than the "absurd result" canon. Under the "plain language" rule, a court must assume that the legislature "meant exactly what it said" and apply the "plain language" of the statute.[79] Courts must "neither read matters into a statute that are not there nor modify a statute by construction,"[80] and a court "must not add words where the legislature has chosen not to include them."[81] Courts must give effect to *all* of the language in an ordinance, rendering no portion meaningless or superfluous.[82] When the legislative body uses different terms, courts presume that the legislature intended a different meaning.[83] Courts should determine the legislature's "plain meaning" by examining "the ordinary meaning of the language at issue, the context of the statute in which that provision is found, related provisions, and the statutory scheme as a

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[78] *See Ervin*, 169 Wn.2d at 824.
[79] *Stroh Brewery Co. v. State, Dep't of Revenue*, 104 Wn. App. 235, 239–40, 15 P.3d 692 (2001) (citing *Duke v. Boyd*, 133 Wn.2d 80, 87, 942 P.2d 351 (1997)).
[80] *Rushing v. ALCOA*, *Inc*., 125 Wn. App. 837, 840, 105 P.3d 996 (2005) (citing *Rhoad v. McLean Trucking Co*., 102 Wn.2d 422, 426, 686 P.2d 483 (1984).
[81] *State v. Arlene's Flowers, Inc*., 187 Wn.2d 804, 829, 389 P.3d 543 (2017), *cert. granted, judgment vacated on other grounds in* 138 S. Ct. 2671, 201 L. Ed. 2d 1067 (2018), *aff'd on remand* 193 Wn.2d 469, 441 P.3d 1203 (2019) (quoting *Rest. Dev., Inc. v. Cananwill, Inc*., 150 Wn.2d 674, 682, 80 P.3d 598 (2003) and citing *Lake v. Woodcreek Homeowners Ass'n*, 169 Wn.2d 516, 526, 243 P.3d 1283 (2010)).
[82] *Id*. at 826.
[83] *State v. Roggenkamp*, 153 Wn.2d 614, 625, 106 P.3d 196 (2005).

whole"[84]—and "[t]he *entire sequence of statutes* enacted by the same legislative authority, relating to the same subject matter, should be considered in placing a judicial construction upon any one of the acts," including "not only prior but *subsequent statutes*."[85]

Here, Division I violated each of these "plain language" rules. Most fundamentally, Division I modified key elements of the statutory language chosen by the legislature, adding words of geographic limitation that narrowed the scope of the "area served" that could be annexed to a sewer district's corporate boundary.[86] Division I also rendered meaningless a number of related statutory provisions recognizing that sewer district boundaries may overlap, and that any conflicts in overlapping areas will be resolved by the first-in-time-to-serve framework created by the legislature.[87] In particular, Division I assigned no meaning to the express exemption the legislature added to former RCW 56.04.070

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[84] *State v. Engel*, 166 Wn.2d 572, 578, 210 P.3d 1007 (2009) (citing *State v. Jacobs*, 154 Wn.2d 596, 600–1, 115 P.3d 281 (2005).

[85] *Little v. Little*, 96 Wn.2d 183, 189, 634 P.2d 498 (1981) (emphasis added) (internal citations omitted)).

[86] *See* Opinion, Appendix at pages A-026 through A-027 (interpreting "area served" to mean "only the area of the sewer system within the boundaries of the county making the transfer").

[87] *See, e.g.*, former RCW 56.04.070 (excepting overlaps created by annexations pursuant to RCW 36.94.420 from the general prohibition on the creation of overlapping sewer district boundaries); RCW 57.08.007 ("Except upon approval of both districts by resolution, a district may not provide a service within an area in which that service is available from another district or within an area in which that service is planned to be made available under an effective comprehensive plan of another district."); RCW 57.08.065(2) ("Where any two or more districts include the same territory as of July 1, 1997, none of the overlapping districts may provide any service that was made available by any of the other districts prior to July 1, 1997, within the overlapping territory without the consent by resolution of the board of commissioners of the other district or districts.").

in 1985 allowing overlaps created by annexations pursuant to RCW 36.94.420.[88] It conflated the mere presence of a sewer district's corporate boundary in a particular area with an exclusive right to provide sewer service in that area.[89] It also failed to recognize distinct meanings for several important statutory terms and phrases, including the term "area served," which is distinct from other terms such as "territory" or "corporate boundary"; and the phrase "deemed annexed," which is distinct from other legislative references to a "transfer" of existing territory.[90] While the phrase "area served" is uniquely focused on areas where service is actually provided, "territory" and "corporate boundary" include areas where service is not being provided; and while "annexation" connotes the creation of *new* territory, and includes the potential to create an overlapping boundary, a "transfer" connotes a zero-sum transaction, in which the enlargement of one boundary must necessarily result in the removal of territory from another boundary. Finally, Division I failed to recognize the long-term pattern across "[t]he entire sequence of statutes" relating to sewer district boundaries and service area rights, including the related GMA planning statutes, which created a framework that consistently valued actions taken to actually *provide sewer service*, or to

[88] *See, e.g.*, Opinion, Appendix at page A-019 ("Clearly, no sewer district had a right to unilaterally extend sewer service into the territory of another district.").
[89] *See* Opinion at page A-017 (quoting the "except as provided in . . . [RCW] 36.94.420" language from former RCW 56.04.070, without assigning any meaning to the exception).
[90] In Division I's view, Ronald was seeking "an annexation of territory *from* Olympic [View]" that would require a "boundary adjustment *between* Ronald and Olympic [View]," triggering the statutory provisions that govern a "transfer" or "withdrawal" of territory from a sewer district. *See* Opinion, Appendix at pages A-008 through A-009 n.12, 24, A-030 through A-031 (emphasis added).

formally plan to provide service, more than actions that merely established territory.[91]

These violations of the rules of statutory construction warrant review by this Court.

3. Division I's substantive analysis of the relevant sewer district statutes conflicts with *Alderwood Water District*.

At the heart of Division I's analysis in the Opinion is its presumption that the legislature adopted an *absolute* prohibition on "the geographical overlapping of sewer districts," such that overlapping sewer district boundaries may *never* be created.[92] That presumption was based on Division I's misreading of former RCW 56.04.070, and its mistaken belief that the language in former RCW 56.04.070 is identical to language in the water district statute discussed in *Alderwood*. Because the language in former RCW 56.04.070 includes an exemption that was not included in water district statute at issue in the *Alderwood* case, Division I's reliance on *Alderwood* was misplaced, and Division I's analysis conflicts with *Alderwood*.[93]

At the time of Ronald's annexation of the Point Wells Service Area, former RCW 56.04.070 provided as follows:

> Whenever two or more petitions for the formation of a sewer district shall be filed as provided in this chapter, the petition

[91] *See Little*, 96 Wn.2d at 189.
[92] *See* Opinion, Appendix at page A-017 (citing former RCW 56.04.070 (1985)).
[93] In addition to conflicting with *Alderwood*, Division I's analysis of the relevant sewer district statutes is inconsistent with the statutory framework and legislative history surrounding those statutes. *See* Ronald's Motion, Appendix at pages A-050 through A-056.

> describing the greater area shall supersede all others, and an election shall first be held thereunder, and no lesser sewer district shall ever be created within the limits in whole or in part of any other sewer district, *except as provided in RCW* 56.36.060 and *36.94.420*, as now or hereafter amended.[94]

To support its flawed reading of former RCW 56.04.070, Division I cites *Alderwood*, a case involving a statute prohibiting the creation of overlapping water districts.[95] The relevant statute in Alderwood reads as follows:

> Whenever two or more petitions for the formation of a water district shall be filed as herein provided, the petition describing the greater area shall supersede all others and an election shall first be held thereunder, and no lesser water district shall ever be created within the limits in whole or in part of any water district.[96]

While this language is similar to the language in former RCW 56.04.070, it includes no exceptions like those found in former RCW 56.04.070. In the Opinion, Division I ignores the material difference between the language of former RCW 56.04.070 and the statute in *Alderwood*, lumping together the different statutes that govern sewer district boundaries and water district boundaries as collectively creating a general "prohibition against overlapping special purpose districts," even though the statutory frameworks are distinct.[97] In short, because the statute at issue in *Alderwood* did not include any exceptions, *Alderwood* is irrelevant to an analysis of former RCW 56.04.070, which included an express exception

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[94] Former RCW 56.04.070 (emphasis added).
[95] *See* Opinion, Appendix at pages A-017 through A-018 (citing *Alderwood*, 62 Wn.2d at 321–22).
[96] *Alderwood*, 62 Wn.2d at 321–22 (quoting former RCW 57.04.070).
[97] *See* Opinion, Appendix at page A-017.

referencing annexations pursuant to RCW 36.94.420.[98] For these reasons, the Opinion conflicts with *Alderwood*, which hinged on the particular statutory language of the water district statute.[99]

B. This Petition involves issues of substantial public interest that should be determined by the Supreme Court.

This Petition involves issues of substantial public interest that should be determined by the Supreme Court, including issues specifically related to the Point Wells Service Area, as well as other issues of broader public interest. This Court has previously accepted review in other cases involving the Point Wells property.[100] As Olympic View and Woodway have conceded in their filings seeking this Court's direct review of the trial court's 2017 Order, the Point Wells Service Area itself raises issues of substantial public interest that should be reviewed by the Supreme Court.[101]

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[98] *See id* at A-017 n.18 ("The same rule applied to water districts. Former RCW 57.04.070 (1985) ('[N]o lesser water district shall ever be created within the limits in whole or in part of any water district, *except as provided in* [former] RCW 57.40.150 [(1981)] and [former RCW] 36.94.420 [(1985)].'") (quoting former RCW 56.04.070)(emphasis added).

[99] *See id*. at A-017. Because Division I failed to give meaning to the express exception in former RCW 56.04.070, the Opinion also conflicts with the *Alderwood* court's broad reminder about "the necessity of closely examining *in toto* statutory provisions conferring authority upon the potentially competing municipal corporations." *Alderwood*, 62 Wn.2d at 321. Division I failed to heed that warning, ignoring the exception in former RCW 56.04.070 as well as several other statutory provisions referencing overlapping sewer district boundaries. As a result, the Opinion conflicts with the *Alderwood* court's caution about examining all relevant statutory provisions before making conclusions about the legislature's intent.

[100] *See Town of Woodway*, 180 Wn.2d at 172; *Chevron U.S.A., Inc. v. Puget Sound Growth Mgmt. Hearings Bd*., 156 Wn.2d 131, 136, 124 P.3d 640 (2005).

[101] *See* Statements of Grounds for Direct Review filed by Olympic View and Woodway, Appendix at page A-286 (stating that review by this Court is warranted because this case involves issues of "public importance," including "issues of municipal law" involving "overlapping jurisdiction of local government"); Appendix at page A-329 (stating that

As a result of Division I's unprecedented approach to collateral attacks on annexations, subject matter jurisdiction, and statutory construction, this Petition also involves other issues of substantial public interest that have broader implications outside the Point Wells Service Area, including:

- When, if ever, courts should allow collateral attacks on annexations and other boundary changes;
- Where to draw the line between a court's "subject matter jurisdiction" and its authority to rule in a particular way;
- When, if ever, special purpose districts and counties can expect finality regarding an annexation or other boundary change pursuant to RCW 36.94.410 through .440, or pursuant to any other statute authorizing a boundary change;
- Whether any sewer districts in Washington State with overlapping boundaries can rely on the first-in-time framework created by the legislature for such overlaps, or whether the rights created by that framework must now be dismissed as "absurd results"; and
- More broadly, how courts should interpret statutes, what limits apply to the ability of courts to modify statutory language under the canon of "absurd results," and whether courts should ever deem statutory language modified under the "absurd results" doctrine to be *jurisdictional* language.

These are all issues of substantial public interest that should be

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review by this Court is warranted because this case involves "issues of public importance" and "public issues of significance to multiple public entities"). It is true that Ronald, Shoreline, and King County opposed direct review, arguing that the case did not warrant accelerated review at that time. Ronald never argued, however, that review by this Court would never be warranted, and the unprecedented nature of Division I's holding heightens the significance of the issues discussed in Olympic View's and Woodway's pleadings, and it raises new issues of substantial public interest, as explained herein.

determined by the Supreme Court pursuant to RAP 13.4(b)(4).

VI. CONCLUSION

For the reasons stated in this Petition, Ronald respectfully asks the Court to accept review of the Court of Appeals Decision.

Respectfully submitted this 30th day of August, 2019.

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

RONALD WASTEWATER DISTRICT, a Washington municipal corporation, Respondent, v. OLYMPIC VIEW WATER AND SEWER DISTRICT, a Washington municipal corporation; and TOWN OF WOODWAY, a Washington municipal corporation, Appellants, SNOHOMISH COUNTY, a Washington municipal corporation; KING COUNTY, a Washington municipal corporation; and CITY OF SHORELINE, a Washington municipal corporation, Defendants.	No. 78516-8-I DIVISION ONE UNPUBLISHED OPINION FILED: July 1, 2019

APPELWICK, C.J. — In 1985, the King County Superior Court entered an order approving an agreement to transfer a sewerage system from "King County" to Ronald. The order stated that the area served by King County was deemed annexed to Ronald. The description of King County's service area in the agreement included Point Wells, an area in "Snohomish County" located within Olympic's corporate boundaries.

In 2016, Ronald brought a declaratory judgment action, arguing in part that the order annexed Point Wells to Ronald. It then moved for partial summary

judgment on that basis. Snohomish County and Woodway also filed motions for summary judgment, arguing that the Transfer Order did not annex any Snohomish County territory to Ronald. The trial court granted Ronald's motion and denied the Snohomish County and Woodway motions. Olympic and Woodway appeal, arguing that the Transfer Order did not authorize the annexation of Point Wells to Ronald.

We hold that the superior court lacked subject matter jurisdiction to grant an annexation by Ronald of territory within the municipal corporate boundaries of Olympic. We reverse the trial court's grant of partial summary judgment to Ronald, remand for an order granting Woodway's motion for summary judgment in part, and for other proceedings consistent with this opinion.

FACTS

The Sewer Districts

In 1937, Olympic View Water District, now known as Olympic View Water and Sewer District, was formed under Title 57 RCW.[1] See former RCW 57.04.020 (LAWS OF 1929, ch. 114, § 1) (authorizing water districts). In 1946, it annexed the southwestern portion of Snohomish County, including Point Wells. Point Wells is an area in Snohomish County consisting of two portions, a low land area along Puget Sound and an upper bluff area above the Burlington Northern Santa Fe

[1] See former RCW 57.04.020 (1929) (authorizing water districts). In 1996, the legislature consolidated water and sewer districts into water-sewer districts. LAWS OF 1996, ch. 230, § 101. Combined water-sewer districts are now governed by a revised Title 57 RCW. Landmark Dev., Inc. v. City of Roy, 138 Wn.2d 561, 570 n.1, 980 P.2d 1234 (1999).

railway tracks. Olympic has provided water service there since 1949. In 1966, Olympic began providing sewer service within its corporate boundaries.[2]

Around 1940, Sewerage and Drainage Improvement District No. 3 of King County (KCSD No. 3) formed.[3] KCSD No. 3 operated a sewer system, often referred to as the Richmond Beach sewer system (RBSS). The RBSS encompassed 350 acres in the northwest corner of King County, an area now within Ronald Wasterwater District's boundaries.[4] KCSD No. 3 was bounded on the north by Snohomish County, on the east and south by Ronald, and on the west by Puget Sound. KCSD No. 3 dissolved in 1984 upon transferring the RBSS to King County.

In 1951, Ronald formed as a sewer district under Title 56 RCW.[5] See former RCW 56.04.020 (1945) (LAWS OF 1941, ch. 210, §1) (authorizing sewer districts). It is located in the northwest corner of King County, within the cities of Shoreline

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[2] In 1963, the Washington Legislature enacted a law allowing water districts to establish, maintain, and operate a mutual water and sewer system, or a separate sewer system. LAWS OF 1963, ch. 111, § 1. Pursuant to former RCW 57.08.065 (LAWS OF 1963, ch. 111, § 1 (1963)), Olympic was subject to former Title 56 RCW for purposes of providing sewer services. We treat the issue between Olympic and Ronald as one between two sewer districts.

[3] By a 1940 resolution, the King County Commissioners appointed the county road engineer as supervisor of KCSD No. 3, delegating to him the governing authority for the district under former RCW 85.08.300 (1965). The county road engineer's duties were then assigned in part to the director of the King County Department of Public Works (King County DPW). After that assignment, the county road engineer and the director of King County DPW shared the function of governing KCSD No. 3.

[4] The RBSS was constructed in 1939 and 1940. The record does not indicate, and the parties do not argue, that the RBSS and KCSD No. 3 were separate legal entities. Rather, Olympic and Ronald argue that KCSD No. 3 was formed to operate the RBSS.

[5] See former RCW 56.04.020 (LAWS OF 1945, ch. 140, § 1) (authorizing sewer districts).

and Lake Forest Park. Ronald is bordered on the north by several municipalities, including Olympic.

The Service Extension Agreements

In 1971, KCSD No. 3 entered into a contract with Standard Oil Company of California (Standard) to operate and maintain a sewage lift station Standard installed in Point Wells (Lift Station No. 13).[6] Lift Station No. 13 was located approximately 180 feet north of the King County line, within Olympic's corporate boundaries at the time. Standard built Lift Station No. 13 in order to connect its marine terminal in Point Wells to KCSD No. 3's sewer system. Before entering the contract, Standard agreed it would install an eight inch gravity sewer line and a four inch pressure sewer line from KCSD's existing lift station to Lift Station No. 13. KCSD No. 3 agreed to reimburse Standard for the cost of the gravity sewer line, which would then become KCSD No. 3's property. Title to the pressure sewer line would also pass to KCSD No. 3 upon its installation. In the 1971 contract, Standard granted KCSD No. 3 a right of way and an easement to maintain, operate, repair, replace, and remove Lift Station No. 13.

In a 1971 letter, Seattle's superintendent of water told Olympic that King County DPW had asked the Seattle Water Department to provide water service to Lift Station No. 13, north of the King County line. Because Lift Station No. 13 appeared to be within Olympic's service area, he asked for Olympic's comments regarding King County DPW's request. In response, Olympic stated that it had "no

[6] Olympic and Ronald refer to the lift station as Lift Station No. 13 in their briefs.

objections to permitting [King County DPW] to serve the lift station located approximately 180 feet north of the King County line on Richmond Beach Drive, within our service area." The parties do not cite to any other correspondence between Olympic and King County regarding KCSD No. 3's service to Lift Station No. 13. There is no indication from the record that Olympic ever consented to KCSD No. 3 extending sewer services into Point Wells.[7]

In 1972, KCSD No. 3 entered into a contract with Daniel Briggs to serve his property in Woodway. The Briggs property "serves into the District's Pump Station No. 13." This area was also located within Olympic's corporate boundaries at the time. There is no indication from the record, and the parties do not argue, that Olympic or Woodway knew about or consented to KCSD No. 3's service to the Briggs property. Ronald does not address the 1972 contract in its brief, and the parties do not provide a citation to the contract in the record.[8]

King County Divests Its Sewer System Operations

In 1982, the King County Council began investigating whether to divest itself of sewer service responsibilities. In 1983, it directed the county executive to begin

[7] Ronald argues that Olympic consented to KCSD's extension of sewer service in its 1971 letter stating that it had "no objections to permitting [King County DPW] to serve the lift station." But, Olympic made this statement in response to the Seattle Water Department's letter stating that King County DPW had asked it to provide water service to Lift Station No. 13. The Seattle Water Department's letter did not address sewer service.

[8] In 1988, Ronald entered into another contract with Briggs to provide sewer service to three more lots, "Lots 2, 3, and 4," in his proposed subdivision. The contract noted that "Lot 1" was already served by Ronald pursuant to KCSD No. 3's 1972 contract with Briggs. Under the contract, Ronald agreed that it would "provide interim sanitary sewer service until such time when permanent sanitary sewer service is provided through the Town of Woodway."

negotiations to transfer the operation and responsibility for its sewerage systems. King County sent a request for proposals to Ronald and eight other agencies that "might be interested in assuming responsibility for King County's five sewer utilities." KCSD No. 3 was located immediately adjacent to Ronald's boundary on the west. Ronald's board then voted to send a proposal to acquire KCSD No. 3. The King County Executive's Office and King County DPW found that its proposal[9] was "an acceptable basis" for negotiating the transfer of King County's sewer district responsibilities.

On January 3, 1984, the King County Council passed a motion directing King County DPW to initiate the transfer of the RBSS. It also directed King County DPW to assist in "seek[ing] amendments to [c]hapter 36.94 RCW which provide for divestment of county sewer service responsibilities through petition to Superior Court." In its 1983 sewer divestment implementation report, King County noted that there were no provisions in existing statutes that specifically applied to the facts in its divestment effort. It stated that in order to divest itself of sewer system responsibilities, it would have to "follow statutes written for use by special purpose sewer districts to accomplish annexation of new territory." Specifically, it stated that divestment could be accomplished through the annexation procedures in former chapter 56.24 RCW.

However, King County noted that divestment of its sewer districts under the current statutes involved the risk that the required voter approval would not be

[9] The report referred to Ronald's proposal to acquire KCSD No. 3 as a proposal to assume the "Richmond Beach system."

obtained.[10] As a result, it proposed seeking legislative amendments to chapter 36.94 RCW, which already allowed a municipal corporation to transfer its sewerage system to a county through petition to a superior court, without voter approval. Its proposed amendments would "provide for a similar process of petition to [a superior court] to transfer a county-operated sewer system to another [municipal] corporation." The report ultimately recommended that King County seek these amendments.

On February 28, 1984, the Washington Legislature passed Substitute House Bill 1127 (SHB 1127). SHB 1127 authorized counties to transfer sewerage systems to a water or sewer district "in the same manner as is provided for the transfer of those functions from a water or sewer district to a county in RCW 36.94.310 through 36.94.340." LAWS OF 1984, ch. 147, § 1; see LAWS OF 1984, at 647 (setting out date it passed the House). Under RCW 36.94.310-.340, a county is allowed to acquire all or part of a sewer system from a municipal corporation by agreement. RCW 36.94.310. The authority is limited to acquisition of systems whose territory lies entirely within the county. Id. In lieu of the voter approval required by former Title 56 RCW for transfers of sewer district territory, the agreement was subject to a judicial hearing and notice of that hearing. Former RCW 36.94.340 (LAWS OF 1975, 1st Ex. Sess., ch 188, § 10). SHB 1127 was

[10] At the time of the report in November 1983, annexation under former chapter 56.24 RCW required voters residing in the territory to be annexed to approve the annexation through a special election. See former RCW 56.24.080 (LAWS OF 1967, Ex. Sess., ch. 11, §2) (providing for special election).

codified at RCW 36.94.410-.440. LAWS OF 1984, ch. 147. It took effect on June 7, 1984. See LAWS OF 1984, at ii (see 5(a) setting out effective date).

In addition to allowing the county to transfer a system without voter approval, SHB 1127 included an annexation provision. It stated that, if provided in the transfer agreement, "the area served by the [county's] system shall, upon completion of the transfer, be deemed annexed to and become a part of the water or sewer district acquiring the system." LAWS OF 1984, ch. 147, § 2. It required a superior court to direct that the transfer be accomplished in accordance with the agreement if the court finds that the agreement is "legally correct and that the interests of the owners of related indebtedness are protected." Id. at § 4. It also exempted the transaction from boundary review board review. Id. at § 5.

In March 1984, the King County Council adopted a sewerage plan for the "Richmond Beach Sewer Service Area." The plan stated that KCSD No. 3 was "bounded on the north by Snohomish County," that "[n]o expansion of the present system boundary" was anticipated, and that "[s]ervice is also provided to a Chevron Petroleum plant on Point Wells just north of the King-Snohomish County border."[11]

The RBSS was transferred to Ronald in two steps. First, in June 1984, King County and KCSD No. 3 filed a joint petition with the King County Superior Court, seeking approval of the transfer of the RBSS from KCSD No. 3 to King County. The court approved the transfer.[12]

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[11] Standard later became Chevron U.S.A., Inc.

[12] The transfer was to be accomplished in accordance with the transfer agreement. King County and KCSD No. 3's transfer agreement provided for the

Second, King County and Ronald entered into an agreement to transfer the RBSS from King County to Ronald, effective January 1, 1986. The agreement stated that "[t]he area served by the System shall be deemed annexed to and a part of the District as of the above-stated effective date." In an addendum describing the "'area served' by the System," King County and Ronald included territory in Snohomish County. Ronald, Olympic, and Woodway agree that the description included Point Wells. The description also included the area in Woodway where the Briggs property is located.

The agreement stated that "the System serves approximately 1,022 customers directly and serves others by developer extension agreements." It incorporated those contracts into the agreement by reference, and assigned all of King County's rights and obligations under those contracts to Ronald. Those contracts included the agreement to operate and maintain Lift Station No. 13 in Point Wells.

King County and Ronald then filed a petition with the King County Superior Court, seeking approval of the transfer agreement pursuant to chapter 36.94 RCW. The court set a November 20, 1985 hearing date, and notice of the hearing was

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transfer of "all property and other assets from the District to King County." It also provided for the dissolution of KCSD No. 3 upon completion of the transfer. And, it stated, "The District is the owner of a certain sanitary sewer system located within King County. The location, size and other features of the system are specifically described in the February 1984 Richmond Beach Comprehensive Plan; a copy of which is attached hereto as Addendum A." According to that plan, KCSD No. 3 was bounded on the north by Snohomish County, and no expansion of that boundary was anticipated. Thus, KCSD No. 3 did not transfer any Snohomish County territory to King County.

published in The Seattle Times. At the end of the hearing, the court entered an order approving the transfer agreement (Transfer Order).

Events Post Transfer Order

In 1986, King County's Executive sent a letter to Snohomish County's Superintendent of Elections, stating that its transfer of the RBSS to Ronald extended Ronald's boundaries into Snohomish County. In Olympic's 1986 sewer plan, it did not include Point Wells in a map of its sewer service area. And, in Ronald's 1990 and 2001 sewer plans, it did not list any Snohomish County territory in its corporate boundaries.

In 2007, Ronald's board adopted a resolution recognizing that its corporate boundary "includes a portion of unincorporated Snohomish County which area lies north of and adjacent to the City of Shoreline, west of and adjacent to the Town of Woodway, south of and adjacent to the City of Edmonds, and east of and adjacent to Puget Sound." That same year, the Snohomish County Prosecuting Attorney's office sent a memorandum of advice to the county auditor, stating that the portion of Snohomish County described in the transfer agreement was annexed to Ronald. Olympic's 2007 sewer plan recognized that Ronald served Snohomish County territory, but still included that territory within its corporate boundaries. Going forward, Ronald's sewer plan listed Snohomish County territory in its corporate boundaries.

In 2015, Olympic proposed amended its 2007 sewer plan. The amendment involved providing service to a site in Point Wells that was being redeveloped into a mixed use urban center. In the amendment, Olympic stated that Ronald currently

provided sewer service to the industrial facilities in Point Wells and four adjacent homes in Woodway. But, Olympic affirmed that Point Wells was within its corporate boundaries. In 2016, the Snohomish County Council passed Amended Motion No. 16-135, approving the amendment to Olympic's 2007 plan.

Present Action

On July 15, 2016, Ronald filed the current action, seeking a declaratory judgment as to whether the Snohomish County Council complied with statutory requirements in approving Olympic's amendment, and whether the amendment affected its right to serve Point Wells. Ronald also sought a declaratory judgment as to whether its corporate boundary includes Point Wells. Ronald then filed a motion for partial summary judgment, seeking a declaratory judgment that (1) the Transfer Order annexed Point Wells to Ronald as of January 1, 1986, (2) the Transfer Order was binding on Snohomish County, Olympic, Woodway, and Edmonds as of January 1, 1986, and (3) RCW 57.02.001 validated and ratified Ronald's annexation of Point Wells, regardless of any defects in the Transfer Order.[13]

Woodway and Snohomish County then filed cross motions for summary judgment. In their motions, Woodway and Snohomish County sought a declaratory judgment that Ronald's corporate boundary does not extend into Snohomish

[13] Ronald did not refer to KCSD No. 3's contract with Briggs, or the Briggs property, in its motion. And, a map it provided in its motion showed the "Point Wells Service Area" as an area separate from, and immediately west of, Woodway. But, in describing Point Wells at the hearing on its motion, Ronald included the portion of Woodway where the Briggs property is located. Thus, Ronald argued at the hearing, but not in its motion, that the Transfer Order also annexed the area where the Briggs property is located.

County.[14] Olympic filed a memorandum in opposition to Ronald's motion, and in support of Woodway and Snohomish County's cross motions.

The trial court granted Ronald's motion for partial summary judgment and denied Woodway and Snohomish County's motions. It found that (1) the Transfer Order annexed the "Point Wells Service Area" to Ronald, (2) the Transfer Order was a judgment in rem, binding against the Snohomish County defendants, and (3) RCW 57.02.001 validated and ratified Ronald's annexation of Point Wells, rendering moot any defect in the Transfer Order. It defined the "Point Wells Service Area" as the area described in addendum A to the transfer agreement, Point Wells and the Briggs property in Woodway. Olympic and Woodway appeal.[15]

DISCUSSION

Ronald claims to have annexed into its corporate boundaries in 1986 an area within Snohomish County that at all times prior had been within Olympic. The area was never within the boundaries of KCSD No. 3. It was never within the boundaries of King County. Annexation of territory between two sewer districts

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[14] Woodway also argued that (1) Ronald has no exclusive right to provide sewer service in Point Wells, (2) Ronald is not entitled to a declaration regarding the legality of Olympic's amendment to its sewer plan or the amendment's effect on Ronald's service right, and (3) there is no factual or legal basis for Ronald's requested injunctive relief. Woodway does not address these additional arguments on appeal. Accordingly, we do not address them.

[15] Prior to the State Supreme Court transferring the case to this court, Olympic filed a motion to include extra-record materials in the appendix to its brief, and King County filed a motion to include additional evidence on review. The motions were transferred to this court. Olympic's additional evidence includes topographical maps and a depiction of the proposed development of Point Wells. King County's additional evidence includes flow swap agreements made between Edmonds and the Municipality of Metropolitan Seattle, and Edmonds and King County. Because the additional evidence in each motion is not necessary to resolve this case, we deny the motions.

was governed by the withdrawal and annexation procedures in former chapters 56.24 and 56.28 RCW.[16] No withdrawal or annexation under those chapters was undertaken here.

Ronald's claim relies on 1984 legislation codified at former RCW 36.94.410-.440. It applies only when a county is transferring a sewer system it operates to a sewer district. Former RCW 36.94.410 (1984). If the transfer agreement so provides, the sewer district acquiring the county's sewer system shall be deemed to have annexed the area served by the county system, upon court approval. RCW 36.94.440; former RCW 36.94.420 (1985). The agreement between King County and Ronald described its area served as including Point Wells and the Briggs properties and provided for Ronald to annex.

The annexation of the portion of the sewer district within the boundaries of King County is not in dispute. Nor is the transfer of the contracts by which King

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[16] At the time of the Transfer Order in 1986, there was no provision in former Title 56 RCW providing for the direct transfer of territory between two sewer districts. Rather, the residents or commissioners of one sewer district would obtain approval from the county legislative authority to withdraw certain territory, or, if the petition for withdrawal was denied, a special election would be held. See former RCW 56.28.010 (1953) (allowing territory to be withdrawn in same manner as withdrawal of territory from water districts); former RCW 57.28.020 (1982) (allowing residents to petition); former RCW 57.28.035 (1985) (allowing sewer district commissioners to commence withdrawal); former RCW 57.28.080 (1941) (providing for hearing before county legislative authority); former RCW 57.28.090 (1982) (providing for special election if petition is denied). Then, annexation of withdrawn territory by another sewer district required approval by the county legislative authority, a special election within the territory proposed to be annexed, and notice to the boundary review board. See former RCW 36.93.090(1)(a) (1985) (requiring that, for any proposed change to the boundary of a special purpose district, the initiators of the action file notice with the boundary review board); former RCW 56.24.080 (1985) (requiring approval by county legislative authority and special election).

County provided services to the property in Snohomish County. Only the annexation of the area within Olympic is at issue.

At the heart of this dispute is the meaning of the words "area served by the system" used in RCW 36.94.420. Did the legislature intend for a county to transfer and a sewer district to annex these areas served by contract, outside the boundaries of the transferring county and within the boundaries of a sewer district not party to the transfer?

I. Transfer and Court Proceedings

Olympic and Woodway argue that the Transfer Order relied on RCW 36.94.410-.440, and that the statutes never authorized the county to transfer or Ronald to annex any area outside of King County's borders. They contend that annexation is an action authorized by the legislature and ordinarily conducted with a vote of the people. Thus, they assert that the only way a superior court could have subject matter jurisdiction to order an annexation would be if the legislature provided it. They argue that the legislature limited annexations under RCW 36.94.410-.440 to the territory within the transferor county's borders. Therefore, they argue that the Transfer Order, which purports to annex Snohomish County territory, is void because the King County Superior Court lacked subject matter jurisdiction.

Conversely, Ronald argues that RCW 36.94.410-.440 did not limit transfers between a county and a municipal corporation to the territory within the transferor county's borders. And, even if the statutes contained such a limitation, it asserts

that the King County Superior Court's failure to comply with the statute did not affect its subject matter jurisdiction.

The trial court granted summary judgment that the Transfer Order lawfully annexed Point Wells to Ronald's corporate boundary. This court reviews summary judgment orders de novo, considering the evidence and all reasonable inferences from the evidence in the light most favorable to the nonmoving party. Keck v. Collins, 184 Wn.2d 358, 370, 357 P.3d 1080 (2015). Summary judgment is appropriate only when no genuine issue exists as to any material fact and the moving party is entitled to judgment as a matter of law. Id.

II. Statutory Interpretation

Olympic and Woodway argue first that the Transfer Order was not legally authorized by RCW 36.94.410-.440. Specifically, they assert that RCW 36.94.410-.440 did not authorize any annexation outside of King County's borders.

A. Standard of Review

Statutory interpretation questions are questions of law that we review de novo. Dot Foods, Inc. v. Dep't of Revenue, 166 Wn.2d 912, 919, 215 P.3d 185 (2009). The court's primary duty in interpreting the statute is to ascertain and carry out the legislature's intent. Lake v. Woodcreek Homeowners Ass'n, 169 Wn.2d 516, 526, 243 P.3d 1283 (2010). Statutory interpretation begins with the statute's plain meaning. Id. "The 'plain meaning' of a statutory provision is to be discerned from the ordinary meaning of the language at issue, the context of the statute in which that provision is found, related provisions, and the statutory scheme as a whole." State v. Engel, 166 Wn.2d 572, 578, 210 P.3d 1007 (2009). We avoid a

reading that produces absurd results, because we presume the legislature does not intend them. Id. at 579. When the plain language is unambiguous, the legislative intent is apparent and we will not construe the statute otherwise. State v. J.P., 149 Wn.2d 444, 450, 69 P.3d 318 (2003).

B. Context of Statutory Scheme

The legislature did not define the phrase "area served" in former RCW 36.94.420. See former RCW 36.94.010 (1981). Olympic and Woodway contend that "area served" is limited to the area served within the transferor county's borders, and does not include area served by contract outside its borders. Ronald disputes that this is the correct interpretation of "area served." It argues that the statute does not limit annexations to territory within the transferor county. Accordingly, we must determine whether, under the plain language of RCW 36.94.420, "area served" means the area only within the transferor county's borders, or includes areas outside the county that it serves by contract.

In 1985, sewer districts like Ronald and Olympic were governed by former Title 56 RCW. Former chapter 56.04 RCW governed their formation. To form or reorganize a sewer district, 25 percent of qualified electors residing within the proposed district had to present a petition to the board of county commissioners of the county in which the proposed sewer district was located.[17] Former RCW

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[17] If the boundaries or proposed boundaries of a sewer district included more than one county,

> all duties delegated by Title 56 RCW to officers of the county in which the district is located shall be delegated to the officers of the county in which the largest land area of the district is located, except that elections shall be conducted pursuant to [former] RCW 56.02.050

56.04.030 (LAWS OF 1945, ch. 140, § 2). The statutory provisions then required a hearing process before the board of county commissioners, and a special election. See former RCW 56.04.040 (1945); former RCW 56.04.050 (LAWS OF 1973 1st Ex. Sess., ch. 195, § 61). The process is purely legislative.

Since 1941, the legislature has prohibited the geographical overlapping of sewer districts. See LAWS OF 1941, ch. 210, § 5. Under former RCW 56.04.070 (1985), if two or more petitions for the formation of a sewer district were filed, the petition describing the greater area superseded all others. And, no lesser sewer district could be "created within the limits in whole or in part of any other sewer district, except as provided in RCW 56.36.060 and 36.94.420."[18] Id.

This prohibition against overlapping special purpose districts is evident in Alderwood Water District v. Pope & Talbot, Inc., 62 Wn.2d 319, 382 P.2d 639 (1963). There, the Washington State Supreme Court considered whether one water district could directly furnish water to the inhabitants located outside the boundaries of that district and within the boundaries of another water district. Id.

> [(1971)], actions subject to review and approval under [former] RCW 56.02.060 [(1971)] and 56.02.070 [(1971)] shall be reviewed and approved by only the officers or boards in the county in which such actions are proposed to occur, verification of electors' signatures shall be conducted by the county election officer of the county in which such signators reside, and comprehensive plan review and approval or rejection by the respective county legislative authorities under [former] RCW 56.08.020 [(1982)] shall be limited to that part of such plans within the respective counties.

Former RCW 56.02.055 (1982).

[18] The same rule applied to water districts. Former RCW 57.04.070 (1985) ("[N]o lesser water district shall ever be created within the limits in whole or in part of any water district, except as provided in [former] RCW 57.40.150 [(1981)] and [former RCW] 36.94.420 [(1985)].").

at 320. The court concluded that the legislative purpose in permitting water districts to supply water to individuals outside their districts "was meant to extend water services only to those individuals who were not within the boundaries of any other water district." Id. at 323.

In doing so, the court noted that, under former RCW 57.04.070 (1929), whenever two or more petitions for the formation of a water district are filed, the petition describing the greater area shall supersede all others. Id. at 321-22. And, no lesser water district shall ever be created within the limits in whole or in part of any water district. Id. It determined that "[t]his statutory prohibition against the geographical overlapping of water districts obviously carries with it an implication that one water district should not infringe upon the territorial jurisdiction of another water district by extending services to individuals therein." Id. at 322. It also observed, "If a water district refuses to serve a property owner whose premises are located within the district . . . an opportunity for relief is available to the property owner, pursuant to [chapter] 57.28[RCW], through a procedure for the withdrawal of territory from the district." Id. at 323. Former chapter 56.28 RCW contains a similar procedure to withdraw from a sewer district. See RCW 56.28.010 (1953).

Former RCW 56.08.060 (1981) also gave sewer districts the authority to "provide sewer service to property owners in areas within or without the limits of the district." But, as of 1981, if any such area was located within another existing district authorized to exercise sewer district powers in that area, service could not be provided "without the consent by resolution of the board of commissioners of

such other district."[19] LAWS OF 1981, ch. 45, § 4. Clearly, no sewer district had a right to unilaterally extend service into the territory of another sewer district.

Former chapters 56.24 and 56.28 RCW governed the annexation of territory between two sewer districts.[20] First, residents within a sewer district had to file a petition to withdraw that territory from the district with the county election officer in each county where the district is located.[21] See former RCW 56.28.010 (1953) (allowing territory to be withdrawn in same manner as withdrawal of territory from water districts); former RCW 57.28.020 (1982) (allowing residents to petition). Hearings would then occur before the sewer district commissioners and county legislative authority in each county where the district is located. See former RCW 56.28.010 (allowing territory to be withdrawn in same manner as withdrawal of territory from water districts); former RCW 57.28.050 (1941) (hearing before sewer district commissioners); former RCW 57.28.080 (1941) (hearing before county

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[19] The same rule applied to water districts. See former RCW 57.08.045 (1981) (providing that a water district may not extend water services into another existing district authorized to exercise water district powers in that area "without the consent by resolution of the board of commissioners of such other district").

[20] Former chapter 57.24 RCW governed the annexation of territory by water districts. The chapter provided for similar petition, hearing, and election procedures. See former RCW 57.24.010 (1982); former RCW 57.24.020 (1982); former RCW 57.24.040 (1929).

[21] If there were no qualified electors residing in the territory to be withdrawn, the landowners of the majority of the acreage of that territory could file a petition for withdrawal with the sewer district commissioners. See former RCW 56.28.010 (allowing territory to be withdrawn in same manner as withdrawal of territory from water districts); former RCW 57.28.030 (1941) (allowing landowners to petition). Alternatively, the board of commissioners of a sewer district could commence the withdrawal of certain territory within that district by resolution. Former RCW 57.28.035.

legislative authority). A special election to determine the withdrawal would be held if the petition was denied. Former RCW 57.28.090 (1982).

Next, like the formation process, annexation of territory adjoining or in close proximity to a district had to be initiated by 20 percent of registered voters residing in the territory filing a petition with the sewer district commissioners. Former RCW 56.24.070 (1985). If there were no electors residing in the territory, the petition could instead be signed by the owners of a majority of the acreage in the territory. Id. The statutory provisions then required a hearing process before the county legislative authority, and a special election.[22] See former RCW 56.24.080 (1985); former RCW 56.24.090 (1967).

When the Transfer Order took effect in 1986, former RCW 56.02.060 (1971) provided that, "[n]otwithstanding any provision of law to the contrary, no sewer district shall be formed or reorganized under chapter 56.04 RCW, nor shall any sewer district annex territory under chapter 56.24 RCW . . . unless such proposed action shall be approved as provided for in [former]RCW 56.02.070[(1971)]." If the proposed annexation were to take place in a county without a boundary review board, the county legislative authority had to approve the action. Former RCW 56.02.070 (1971). If the proposed annexation were to take place in a county with

[22] The legislature also provided for an alternative petition method for "annexation of an area contiguous to a sewer district." Former RCW 56.24.120 (1985). The petition had to be filed with the board of the sewer district commissioners, and signed by the owners of at least 60 percent of the area of land for which annexation was petitioned. Id. The statutory provisions then required a hearing process before the board of commissioners, after which the board would determine by resolution whether to annex the land. See RCW 56.24.130 (1967); RCW 56.24.140 (1967).

a boundary review board, notice of intention of the proposed action had to be filed with the board, and a copy had to be filed with the legislative authority. Id. If the county legislative authority approved the proposed action, such approval was final. Id. If it did not, the board would review the action. Id. The board's decision superseded approval or disapproval by the county legislative authority. Id. There was no role for a superior court in this process. Clearly, no sewer district had a statutory right to unilaterally annex a portion of another sewer district.

Former chapter 36.94 RCW governs a county's operation of its sewerage, water and drainage systems. It provides that "[t]he construction, operation, and maintenance of a system of sewerage and/or water is a county purpose." Former RCW 36.94.020. Every county, either individually or in conjunction with another county, has the power to "adopt, provide for, accept, establish, condemn, purchase, construct, add to, and maintain a system or systems of sanitary and storm sewers, including outfalls, interceptors, plans, and facilities necessary for sewerage treatment and disposal . . . within all or a portion of the county." Id. (emphasis added). Counties may also contract to do things outside their borders:

> Every county in furtherance of the powers granted by this chapter shall be authorized to contract with the federal government, the state of Washington, or any city or town, within or without the county, and with any other county, and with any municipal corporation created under the laws of the state of Washington and not limited as defined in [former]RCW 36.94.010[(1981)], or political subdivision, and with any person, firm or corporation in and for the establishment, maintenance and operation of all or a portion of a system or systems of sewerage and/or water supply.

RCW 36.94.190.

Former Title 36 RCW provides different procedures for the transfer of sewerage systems and annexation of territory by sewer districts, where one of the parties to the transfer is a county. See RCW 36.94.310; former RCW 36.94.410-.420. The approval of any annexation by a sewer district is before the superior court, rather than county commissioners and voters. RCW 36.94.440.

RCW 36.94.310 provides that a municipal corporation may transfer to a county "within which all of its territory lies" all or part of the property constituting its system of sewerage. Since a county already had statutory authority to provide sewer service county-wide, the statutes governing this type of transfer, RCW 36.94.310-.340, do not include any annexation provisions nor implicate boundary review. See former RCW 36.94.020 ("[E]very county has the power [to] maintain a system of sanitary and storm sewers . . . within all or a portion of the county.").

Under former RCW 36.94.410, a county's water or sewerage system may be transferred from that county to a water or sewer district "in the same manner as is provided for the transfer of those functions from a water or sewer district to a county in RCW 36.94.310 through 36.94.340." Under former RCW 36.94.420, if provided in the transfer agreement, "the area served by the system shall, upon completion of the transfer, be deemed annexed to and become a part of the water or sewer district acquiring the system." In contrast to annexations under former Title 56, annexations by a sewer district under former RCW 36.94.410-.440 are not subject to review by a boundary review board. Former RCW 36.93.105 (1984).

In 1967, the legislature authorized the creation of boundary review boards by a county. LAWS OF 1967, ch. 189, § 3. In describing the purpose of boundary review boards, it noted,

> [T]he competition among municipalities for unincorporated territory and the disorganizing effect thereof on land use, the preservation of property values and the desired objective of a consistent comprehensive land use plan for populated areas, makes it appropriate that the legislature provide a method of guiding and controlling the creation and growth of municipalities in metropolitan areas so that such problems may be avoided.

Id. at § 1. Former RCW 36.93.090(1)(a) (1985) required that, for any proposed change to the boundary of a special purpose district, the initiators of the action file a notice of intention of the action with the board. In defining a "special purpose district," the legislature included sewer districts. Former RCW 36.93.020 (1979). It also required that the initiators of an action to permanently extend sewer service outside the boundaries of a sewer district file a notice of intention of the action with the board. Former RCW 36.93.090(5).

Annexation addresses boundaries of municipal districts. No sewer district is authorized to provide sewer service within another district without that district's consent. The statutory scheme for sewer districts is clearly intended to avoid overlapping boundaries of sewer districts. Both former Title 56 RCW, which governed sewer districts, and chapter 36.93 RCW, which governs boundary review of such special districts, protect the ability of sewer districts to provide sewer services within their corporate boundaries. See former RCW 36.93.090(3)-(4); former RCW 56.04.070 (providing that no lesser sewer district shall be created within the limits in whole or in part of any other sewer district); former RCW

56.08.060 (providing that a sewer district shall not provide sewer services within another existing district authorized to exercise sewer district powers without the consent by resolution of the board of commissioners of such other district).

C. Plain Meaning of Area Served

The result Ronald seeks is an annexation of territory from Olympic, without Olympic's involvement, let alone consent. The basis of its claim is that the transfer agreement with King County provided for the annexation. But, the area to be annexed was not within King County's boundaries. It would be unreasonable to read the statute as authorizing King County to transfer territory, within another special purpose district, within another county, as part of its divestment of its own sewer system.

Had the legislature been aware of the conflict between RCW 36.94.410-.440 and former Title 56 RCW, and had it intended the result Ronald seeks, it would surely have written an explicit exemption from the conflicting provisions in former Title 56 RCW. No such exemption or even cross-reference appears in RCW 36.94.410-.440. Former Title 56 RCW does not allow a hostile annexation by one sewer district against another. It prohibits a sewer district from providing sewer service within another district authorized to exercise sewer district powers, unless that district consents. Former RCW 56.08.060. The reasonable inference from the language in the statutes is that the legislature did not anticipate that RCW 36.94.410-.440 conflicted with former Title 56 RCW, did not intend to exempt the transaction from former Title 56 RCW, and did not intend the result Ronald seeks.

The exemption from boundary review board review in SHB 1127 is also consistent with a legislative expectation that no boundary issues are implicated. If the legislature intended for the area being annexed by a sewer district to be solely within the boundaries of the county making the transfer, then no boundary issues with other districts are implicated. Review would serve no purpose. However, if the legislature was aware that the area being annexed could be outside the boundaries of the transferring county, it would be aware of a potential conflict with the boundaries of other districts and the resulting conflict between SHB 1127 and former Title 56 RCW. If the legislature had anticipate this scenario, it would have addressed the conflict between these statutes.

But, because SHB 1127 contained no exemption from former Title 56 RCW to eliminate the conflict between the two statutes, former RCW 56.02.060 would apply to the conflicting claims of Ronald and Olympic. Thus, the statute would control over the boundary review board exemption for transfers under RCW 36.94.410-.440. Former RCW 56.02.060 provides, "Notwithstanding any provision of law to the contrary, no sewer district shall be formed or reorganized under [former]chapter 56.04 RCW, nor shall any sewer district annex territory under [former]chapter 56.24 RCW . . . unless such proposed action shall be approved as provided for in [former]RCW 56.02.070." (Emphasis added.) Former RCW 56.02.070 required boundary review board approval.[23]

[23] For counties without a boundary review board, former RCW 56.02.070 required approval by the county legislative authority.

The result is that no boundary review board review would occur as to transfer of the portion of the sewerage system within the county's boundaries, but would occur as to transfer of any portion of the sewer system outside the county boundaries within another sewer district. It is unreasonable to believe that the legislature exempted an RCW 36.94.410-.440 transaction from boundary review board review, without qualification, if it anticipated any boundary issues with a sewer district not a party to the county transfer.[24]

Both former Title 56 RCW and chapter 36.93 RCW protect the authority of municipal corporations to provide services within their corporate boundaries. Accordingly, we conclude that no boundary conflicts with a third party district were anticipated when RCW 36.94.410-.440 was enacted, no exemption from former Title 56 RCW was stated, and none can be inferred.

It is clear from the context and the 1986 statutory scheme as a whole that the plain meaning of "area served" for purposes of annexation means only the area

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[24] For the first time in 1995, the legislature included and defined the word "service area" in this statute. LAWS OF 1995, ch. 131, § 1. It stated that, for extensions of sewer services outside of a special purpose district's service area, "service area" includes "the area outside of the corporate boundaries which it is designated to serve pursuant to a comprehensive sewerage plan approved in accordance with chapter 36.94 RCW and RCW 90.48.110." LAWS OF 1995, ch. 131, § 1. A permanent extension of this area was subject to review by a boundary review board. Id. "It is a well-recognized rule of statutory construction that 'where a law is amended and a material change is made in the wording, it is presumed that the legislature intended a change in the law.'" Guillen v. Pierce County, 144 Wn.2d 696, 723, 31 P.3d 628, 34 P.3d 1218 (2001) (quoting Home Indem. Co. v. McClellan Motors, Inc., 77 Wn.2d 1, 3, 459 P.2d 389 (1969)), rev'd in part on other grounds, 537 U.S. 129, 123 S. Ct. 720, 154 L. Ed. 2d 610 (2003). Accordingly, this change should be construed such that, prior to the legislature defining "service area" to include area outside of a district's corporate boundaries, a district's service area did not include area outside of its corporate boundaries.

of the sewer system within the boundaries of the county making the transfer. It does not include the area outside its borders, served by contract, and within the corporate boundaries of another municipal corporation with sewer district powers.

III. Subject Matter Jurisdiction

The transfer agreement between King County and Ronald provided that "[t]he area served by the System shall be deemed annexed to and a part of the District as of" January 1, 1986. In an addendum describing the "'area served,'" King County and Ronald included Snohomish County territory. That territory included Point Wells, and the area in Woodway where Briggs's property is located.

Point Wells and the area in Woodway where Briggs's property is located were never within King County or KCSD No. 3's boundaries. Thus, after KCSD No. 3 transferred the RBSS to King County, King County acquired no right to provide service in Snohomish County beyond that in its contracts with Standard and Briggs. Yet, in the Transfer Order, King County purported to transfer and allow Ronald to annex this territory by including it in the legal description of its service area.

The Transfer Order stated, "As provided in the transfer agreement, the area served by the System shall be annexed to and become a part of the District." Thus, in directing that Snohomish County territory be annexed to Ronald, the King County Superior Court directed an annexation that was not legally authorized by RCW 36.94.410-.440. Under the plain meaning of "area served" in former RCW 36.94.420, Ronald could annex only the area served within King County's borders. It was not permitted to annex Snohomish County territory within Olympic's

boundaries that King County served by contract. Accordingly, the King County Superior Court committed legal error in directing that Snohomish County territory be annexed to Ronald.

Ronald contends that, even if the King County Superior Court lacked statutory authority to enter the Transfer Order, the order is not void because the court had subject matter jurisdiction. Where a court has personal and subject matter jurisdiction, a procedural irregularity renders a judgment voidable, not void. In re Marriage of Mu Chai, 122 Wn. App. 247, 254, 93 P.3d 936 (2004). Ronald argues further that estoppel, laches, and acquiescence bar Olympic and Woodway from seeking relief from the order. Olympic and Woodway argue that the King County Superior Court lacked subject matter jurisdiction over the "cross-border annexation." To the extent that King County asked the court to approve Ronald's annexation of territory in Snohomish County, they contend that the action was void.

A court order is void only if there is a defect in subject matter or personal jurisdiction. Trinity Universal Ins. Co. of Kan. v. Ohio Cas. Ins. Co., 176 Wn. App. 185, 198, 312 P.3d 976 (2013). Jurisdiction is the "'power and authority of the court to act.'" Dougherty v. Dep't of Labor & Indus., 150 Wn.2d 310, 315, 76 P.3d 1183 (2003) (quoting 77 AM. JUR. 2D Venue § 1 at 608 (1997)). "The critical concept in determining whether a court has subject matter jurisdiction is the 'type of controversy.'" Id. at 316 (quoting Marley v. Dep't of Labor & Indus., 125 Wn.2d 533, 539, 886 P.2d 189 (1994)). If the type of controversy is within the court's subject matter jurisdiction, then all other defects or errors go to something else. Id. In light of the state constitution's broad grant of subject matter jurisdiction to

the superior court, "we may find a lack of subject matter jurisdiction only under compelling circumstances, such as when it is explicitly limited by the legislature or Congress." Hous. Auth. v. Bin, 163 Wn. App. 367, 375, 260 P.3d 900 (2011).

The state constitution does not grant superior courts the power of annexation. See WASH. CONST. art. IV, § 6. Rather, the legislature "enjoys plenary power to adjust the boundaries of municipal corporations and may authorize annexation without the consent of the residents and even over their express protest." Grant County Fire Prot. Dist. No. 5 v. City of Moses Lake, 150 Wn.2d 791, 813, 83 P.3d 419 (2004). While the State may delegate its annexation power and prescribe the mode, method, and conditions under which the delegated authority may be exercised, the ultimate power of annexation rests exclusively in the State. Id.

When the Transfer Order took effect in 1986, the legislative scheme for sewer district formation was governed by former chapter 56.24 RCW. Annexation of territory by a sewer district was to be accomplished through a hearing and election process. Former RCW 56.24. 080. It required county legislative authority and voter approval of the annexation. See former RCW 56.24.080 (requiring county legislative authority to approve petition); former RCW 56.24.090 (requiring special election). Superior courts had no role in these procedures.

In 1984, the legislature granted superior courts narrow jurisdiction to approve the annexation of territory by a sewer district. See RCW 36.94.440; former RCW 36.94.410; former RCW 36.94.420. That authority was limited to transactions in which a county was transferring by agreement a water or sewerage

system it operated to a water or sewer district. See former RCW 36.94.410. In that two party transaction, approval was vested in the superior court, rather than the county legislative authority and voters within the territory to be annexed. See RCW 36.94.440.

Under those procedures, if a superior court finds that an agreement to transfer a county's water or sewerage system to a water or sewer district "is legally correct and that the interests of the owners of related indebtedness are protected," then the court "shall direct that the transfer be accomplished in accordance with the agreement." Former RCW 36.94.440. If provided in the transfer agreement between the county and the water or sewer district, "the area served by the system shall, upon completion of the transfer, be deemed annexed to and become a part of the . . . sewer district acquiring the system." Former RCW 36.94.420. As established above, "area served" means only the area within the borders of the county making the transfer.

A county could not transfer what it did not have. King County did not have a statutory right to provide sewer service in Snohomish County. Thus, pursuant to the transfer agreement, Ronald could annex only King County territory from King County, not Snohomish County territory from Olympic.

Point Wells and the Briggs properties were within Olympic's corporate boundaries at the time of the Transfer Order. Olympic was not a party to King County and Ronald's transfer agreement or petition to approve the agreement. Any potential annexation and boundary adjustment between Ronald and Olympic

was controlled by former Title 56 RCW, not by Title 36 RCW, and superior courts lacked jurisdiction over annexation under former Title 56 RCW.

By enacting former RCW 36.94.410-.440, the legislature did not give superior courts general jurisdiction to approve annexations. It did not grant to superior courts jurisdiction to allow a sewer district to annex territory from another municipal corporation not party to a transfer agreement under chapter 36.94 RCW and contrary to former Title 56 RCW. Rather, it gave superior courts only narrow jurisdiction to approve the annexation of territory within a county by a sewer district, based on an agreement to transfer a sewerage system from that county to the sewer district. See former 36.94.410; 36.94.420; 36.94.440. Thus, the King County Superior Court lacked subject matter jurisdiction to approve an annexation of any area within Olympic by Ronald.

Accordingly, to the extent that the Transfer Order purports to authorize Ronald's annexation of area within Snohomish County and within Olympic, the order is void.[25] Ronald's corporate boundaries do not extend into Snohomish County.

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[25] Because we conclude that the Transfer Order is void due to a lack of subject matter jurisdiction, we do not reach Ronald's arguments regarding estoppel, laches, and acquiescence, or Olympic's remaining arguments that would apply only to a voidable order. A court has a nondiscretionary duty to vacate a void judgment. Allstate Ins. Co. v. Khani, 75 Wn. App. 317, 323, 877 P.2d 724 (1994). Void judgments may be vacated regardless of the lapse of time; not even laches bars a party from attacking a void judgment. Id. at 323-24. And, unlike personal jurisdiction, a party cannot waive subject matter jurisdiction. Sullivan v. Purvis, 90 Wn. App. 456, 460, 966 P.2d 912 (1998).

IV. RCW 57.02.001

Ronald argues that enactment of RCW 57.02.001 validated its annexation of Point Wells, "rendering moot any technical defect in the 1985 Annexation Order." (Boldface omitted.)

RCW 57.02.001 provides:

> Every sewer district and every water district previously created shall be reclassified and shall become a water-sewer district, and shall be known as the ". . . . . Water-Sewer District," or "Water-Sewer District No. . . . . ." or shall continue to be known as a "sewer district" or a "water district," with the existing name or number inserted, as appropriate. As used in this title, "district" means a water-sewer district, a sewer district, or a water district. All debts, contracts, and obligations previously made or incurred by or in favor of any water district or sewer district, and all bonds or other obligations issued or executed by those districts, and all assessments or levies, and all other things and proceedings done or taken by those districts or by their respective officers, are declared legal and valid and of full force and effect.

Ronald asserts that the broad language validating "'all acts' . . . clearly encompasses Ronald's annexation of the Point Wells Service Area."

In 1996, the legislature eliminated distinct water and sewer districts and created combined water-sewer districts, all under a revised Title 57 RCW. Landmark Dev., Inc. v. City of Roy, 138 Wn.2d 561, 570 n.1, 980 P.2d 1234 (1999). RCW 57.02.001 provides that each water and sewer district be reclassified as a water-sewer district. In this context, it is clear that the legislature intended to ensure that the previous valid actions of the municipal corporations were not called into question by virtue of the reclassification, renaming or amended statutory authority. The statutory language does not legalize invalid or illegal actions nor insulate the districts from then existing claims. To infer such an intention would be

absurd, and we presume that the legislature does not intend absurd results. See Engel, 166 Wn.2d at 579.

Moreover, the lack of subject matter jurisdiction over the type of annexation King County and Ronald proposed was not a technical defect in the Transfer Order. It was a fatal defect. Nothing in this statute remedies the lack of subject matter jurisdiction in the superior court to approve the annexation. Accordingly, to the extent that the Transfer Order purports to authorize Ronald's annexation of Snohomish County territory, RCW 57.02.001 does not render that annexation valid.

We reverse the trial court's grant of partial summary judgment to Ronald, remand for an order granting Woodway's motion for summary judgment in part, and for other proceedings consistent with this opinion.[26]

Appelwick, C.J.

WE CONCUR:

Dwyer, J.

Mann, A.C.J.

[26] Specifically, we order that Woodway be granted summary judgment as to its argument for a declaration that, based on the Transfer Order, Ronald's corporate boundary does not extend into Snohomish County.

NO. 78516-8-I

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

OLYMPIC VIEW WATER AND SEWER DISTRICT, a Washington municipal corporation; and TOWN OF WOODWAY, a Washington municipal corporation,

Appellants,

v.

RONALD WASTEWATER DISTRICT, a Washington municipal corporation

Respondent,

and

SNOHOMISH COUNTY, a Washington municipal corporation; KING COUNTY a Washington municipal corporation; CITY OF SHORELINE, a Washington municipal corporation,

Defendants.

RONALD WASTEWATER DISTRICT'S MOTION FOR RECONSIDERATION

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I. RELIEF REQUESTED

Pursuant to RAP 12.4, Respondent Ronald Wastewater District ("Ronald") files this Motion for Reconsideration ("Motion").[1] For the reasons stated below, Ronald respectfully asks the Court to reconsider the unpublished opinion filed in this matter on July 1, 2019 (the "Opinion") and modify the Opinion as requested below. Ronald understands that courts rarely grant such motions but believes that this case involves one of the few situations where reconsideration is appropriate.

II. OVERVIEW OF ARGUMENT

This case is unique—not only because it involves issues of first impression requiring the Court to interpret the complex and arcane statutes that govern sewer district boundaries, but also because the most important statutory provisions and other authorities cited in the Opinion were not briefed by the parties. The Opinion was based primarily on authorities that had not previously been raised by the parties in this appeal, but instead were cited for the first time by the Court during oral argument[2] and in the Opinion.[3] Because these authorities did not emerge in this

[1] The City of Shoreline and King County have authorized Ronald to inform the Court that they support this Motion. Ronald also supports and joins in the City of Shoreline's Motion for Reconsideration.

[2] During oral argument, the Court cited, for the first time in this case, the provisions of Title 57 RCW that govern changes to sewer district boundaries. The Court also suggested, for the first time, that Ronald's annexation of the Point Wells Service Area would have "stripped" Olympic View's authority to provide service within that area by withdrawing territory from its corporate boundary.

[3] *See, e.g.*, Opinion at 17 (citing, for the first time, former RCW 56.04.070 (1985) and Laws of 1941, ch. 210, § 5). The Opinion was also based on authorities that were cited for the first time in this proceeding in the over-length reply brief filed by Olympic View Water & Sewer District ("Olympic View"). *See, e.g.*, Opinion at 17–18 (citing

proceeding until after the respondents' briefs had been filed, Ronald did not have an opportunity to address them, and the Court was not adequately informed about them when it filed the Opinion.

Most importantly, the Court was not adequately informed about the legislative history surrounding former RCW 56.04.070 (1985), one of the authorities cited for the first time in the Opinion. The Court cited that statute to support a central premise of the Opinion: that the Legislature adopted an absolute prohibition on the "geographical overlapping of sewer districts," such that overlapping corporate boundaries are never allowed.[4] If the Court had received briefing on former RCW 56.04.070, however, the briefing would have focused the Court's attention on a 1985 amendment to the statute that exempted overlapping boundaries created by annexations pursuant to RCW 36.94.410–.440.[5] The legislative history behind that 1985 amendment confirms the legislature's intent to allow the creation of new sewer district boundary overlaps via the annexation process described in RCW 36.94.420.[6]

But because the Court assumed that sewer district boundaries may never overlap, it took a "zero-sum" view of sewer district annexations, such that Ronald's annexation of the Point Wells Service Area to its corporate boundary would necessarily require the *removal* of that same

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Alderwood Water Dist. v. Pope & Talbot, Inc., 62 Wn.2d 319, 322, 382 P.2d 639 (1963) (cited for first time in Olympic View's reply brief)).

[4] *See* Opinion at 17.

[5] *See* Section III.B.3, *infra*.

[6] *Id*.

area from Olympic View's boundary. In the Court's view, Ronald was seeking "an annexation of territory *from* Olympic [View]"—a "hostile annexation by one sewer district *against* another"—that would require a "boundary adjustment *between* Ronald and Olympic," triggering the statutory provisions that govern "withdrawal" of territory from a sewer district.[7]

Based on this overly-simplified, zero-sum view of sewer district annexations, the Court concluded that the legislature could not have intended a literal meaning when it adopted the language in Substitute House Bill 1127 ("SHB 1127") allowing the annexation of territory via the Superior Court process: "Had the legislature been aware of the conflict between RCW 36.94.410–.440 and former Title 56 RCW, and had it intended the result Ronald seeks, it would surely have written an explicit exemption from the conflicting provisions of former Title 56 RCW."[8] As explained above, however, the Legislature *did* adopt an explicit exemption from the provisions of former Title 56 RCW for overlaps created by the judicial annexation process in RCW 36.94.420. Thus, there was no "conflict" between RCW 36.94.410–.440 and former Title 56 RCW.

Another central premise of the Opinion is that the legislature could not have literally meant what it said when it exempted judicial annexations pursuant to RCW 36.94.420 from review by the Boundary Review Board

[7] Opinion at 24, 30–31 (emphasis added).
[8] *Id*. at 24.

("BRB").[9] That premise was based largely on the Court's belief that Ronald's annexation of the Point Wells Service Area necessarily required the removal of that area from Olympic View's boundary, which is incorrect as explained above. The Court's analysis of the BRB issue was also based on its belief that the legislature would have adopted different language if it had been aware that "the area being annexed could be outside the boundaries of the transferring county."[10] That belief is also incorrect. The legislature had previously authorized annexations across County lines that would result in "multi-county districts," so the legislature would not have perceived a conflict in the mere fact that a particular annexation might cross a county line, as happened here.[11]

Nor would the legislature have seen a conflict in the fact that Ronald sought to annex territory that was not previously part of King County's corporate boundary. Unlike the "transfer" provisions of RCW 36.94.410, which authorize a transfer of the sewer "system," the language in RCW 36.94.420 authorizing annexation of territory did not rely on a "transfer" of territory from a county to a district. Instead, the legislature went out of its way to use language that authorized annexation of the "area served"—unique language that was discussed during legislative hearings and in the bill reports and other materials reflecting the legislative history, and is consistent with the legislature's long-term focus on the primary

[9] *Id*. at 25.
[10] *Id*. at 25.
[11] *See* Section III.B.4, *infra*.

importance of the *actual provision of service*, which took priority over the establishment of mere territory.[12] That language was not used casually or ineptly. Had the legislature intended to limit annexations areas within the boundaries of the county making the transfer, it would have used express language to do so. In light of the legislative framework and history described in this Motion, the Court should not have attempted to add those words of limitation to the statute's plain language.

The legislative framework and history provide critical context that will help the Court understand the reasons why the legislature might have consciously chosen *not* to limit these kinds of annexations to the corporate boundary of the transferring county, including the policy goal of ensuring that sewer service is actually provided to all areas where it is desired. When the legislature adopted SHB 1127, it knew that King County had begun providing sewer service to the areas in question because *no other sewer district or other entity in the area was willing to do so*.[13] And the record confirms that Olympic View expressed no interest in actually providing service to the Point Wells Service Area until decades after the 1985 Transfer Order was entered.[14] Under these circumstances, it is not difficult to imagine why the legislature might have intended to allow the type of annexation that Ronald sought here.

The legislature is presumed to be aware of its prior enactments,

[12] *See* Section III.B.1, *infra*.
[13] *See* Section III.B.2, *infra*.
[14] *See* Section III.B.4, *infra*.

including the first-in-time framework it adopted for sewer district boundaries in 1981. Under that framework, when there are overlapping sewer district boundaries, the first district to *provide service* in a particular area has the exclusive right to continue providing that service.[15] With that framework in mind, the legislature would not have seen the overlap between Ronald's and Olympic View's corporate boundary as a "conflict," since the question of which district had the right to serve the area would be resolved by the first-in-time framework. Finally, to the extent that any overlapping boundary may have presented a "conflict," the legislative history behind SHB 1127 confirms that the legislature viewed the judicial hearing and notice provisions of RCW 36.94.410–.440 as an adequate substitute for the BRB process in addressing any such conflicts that did arise.[16]

In short, the Court's interpretation of SHB 1127 as containing implicit geographical limitations on annexation was based on an incomplete and flawed reading of the statutory framework. When the Court takes into consideration the additional statutory provisions and legislative history cited in this Motion, it will become clear that there was no true boundary "conflict" that the legislature overlooked—not in the general statutory framework, nor in the specific facts surrounding the Point Wells Service Area. Accordingly, the Court should not have construed SHB 1127 as containing implicit geographical limitations that

[15] *See* Section III.B.1, *infra*,

[16] *See id*.

were not expressly stated in the plain language of the statute. For these reasons, which are further explained below, Ronald respectfully requests that the Court modify its Opinion to acknowledge the statutory provisions and legislative history cited in this Motion, and to confirm that the 1985 Transfer Order is valid and binding on the Snohomish County parties.

Finally, even if the Court declines to modify its decision regarding the validity of the 1985 Transfer Order, Ronald asks the Court to clarify that the Opinion addresses the status of Ronald's corporate boundary *based on the Transfer Order only,* and does not address any issues related to events that occurred after that date. Those issues are not before this Court, and the Court should clarify that Ronald still has the right to pursue them on remand to the Superior Court.

III. ARGUMENT

A. Standard of Review

As this Court stated in the Opinion, the Court's primary duty in interpreting statutes is to ascertain and carry out the legislature's intent.[17] The Court's analysis begins with the statute's "plain meaning," which is discerned from "the ordinary meaning of the language at issue, the context of the statute in which that provision is found, related provisions, and the statutory scheme as a whole."[18] While the Court recited these "plain meaning" rules in the Opinion, the Court's construction of RCW

[17] Opinion at 15 (citing *Lake v. Woodcreek Homeowners Ass'n*, 169 Wn.2d 516, 526, 243 P.3d 1283 (2010)).

[18] *Id*. (citing *Lake*, 169 Wn.2d at 526; *State v. Engel*, 166 Wn.2d 572, 579, 210 P.3d 1007 (2009)).

36.94.420 was based primarily on the canon of "absurd results," which holds that courts should avoid a literal reading of a statute that produces "absurd results."[19] As this Court has recognized in other cases, however, the "absurd results" canon "must be applied sparingly, consistent with separation of powers principles."[20] The canon should be invoked only to "'prevent *obviously* inept wording from thwarting *clear* legislative intent,' not when it merely appears that a different policy choice might have been preferable."[21]

Courts use the "absurd results" canon "sparingly because it 'refuses to give effect to the words the legislature has written.'"[22] As the Supreme Court explained in *Five Corners Family Farmers*:

> Application of the absurd results canon, by its terms, refuses to give effect to the words the legislature has written; it necessarily results in a court disregarding an otherwise plain meaning and inserting or removing statutory language, a task that is decidedly the province of the legislature. *See Rest. Dev., Inc.,* 150 Wn.2d at 682, 80 P.3d 598 ("[A] court must not add words where the legislature has chosen not to include them."); *Point Roberts*

[19] *See* Opinion at 15–16 (referencing the "absurd results" canon and citing *Engel*, 166 Wn.2d at 579); *id*. at 24–26 (stating that "it would be unreasonable" to apply the plain meaning of RCW 36.94.420).

[20] *State v. Granath*, 200 Wn. App. 26, 38, 401 P.3d 405, *aff'd*, 190 Wn.2d 548, 415 P.3d 1179 (2018).

[21] *Id*. (emphasis added) (quoting *In re Dependency of D.L.B*., 186 Wn.2d 103, 119, 376 P.3d 1099 (2016) (declining to apply the canon because the wording in question was "not obviously inept").

[22] *Columbia Riverkeeper v. Port of Vancouver USA*, 188 Wn.2d 421, 443, 395 P.3d 1031 (2017) (quoting *Five Corners Family Farmers v. State*, 173 Wn.2d 296, 311, 268 P.3d 892 (2011) (declining to apply the canon because "carefully limiting discussion in executive discussion is far from absurd"); *Anthis v. Copland*, 173 Wn. 2d 752, 765, 270 P.3d 574 (2012) (stating that the "absurd results" canon should be applied only when "it is required to make the statute rational or to effectuate the clear intent of the legislature," and declining to apply it in that case "absent express statutory language to the contrary").

> *Fishing Co. v. George & Barker Co*., 28 Wash. 200, 204, 68 P. 438 (1902). This raises separation of powers concerns. Thus, in *State v. Ervin*, 169 Wn.2d 815, 824, 239 P.3d 354 (2010), we held that if a result "is conceivable, the result is not absurd."[23]

Here, as explained below, if the central premises of the Opinion were correct—had the legislature *not* authorized overlapping sewer district boundaries or given *any* consideration to potential boundary conflicts that might result from annexations pursuant to RCW 36.94.420, and if Ronald's annexation of the Point Wells Service Area had resulted in the *withdrawal* of territory from Olympic View's corporate boundary, that might have been an inconceivable and "absurd" result. That is not, however, what happened here. Instead, Ronald's annexation of Point Wells resulted in an *overlap* between the two districts' boundaries—an overlap that was specifically authorized by the legislature, which had decided that the Superior Court process was an adequate substitute for BRB review, and which had previously created a first-in-time framework to resolve any service disputes in overlapping territories. And at the time, the legislature knew that districts like Ronald were willing to provide sewer service to the areas in question, while districts like Olympic View were not. In light of this more nuanced fact pattern, it is easily conceivable that the legislature could have intended to allow the types of annexations that Ronald accomplished pursuant to RCW 36.94.420.

[23] 173 Wn.2d at 311 (declining to apply the canon because "[i]t is conceivable that the legislature intended to allow permit-exempt withdrawals of groundwater for stock-watering purposes without a specified quantity"); *State v. Ervin*, 169 Wn.2d 815, 824, 239 P.3d 354 (2010) (citing Black's Law Dictionary 10 (9th ed. 2009) (defining "absurdity" as involving an interpretation that "the drafters could not have intended")).

Indeed, Ronald believes that was the legislature's specific intention.

B. The Court Should Modify the Opinion to Confirm that the 1985 Transfer Order is Valid and Binding.

1. In 1981, the legislature expressly authorized overlapping sewer district boundaries, and it created a first-to-serve framework to resolve any future conflicts in overlapping areas.

In 1981, the legislature passed Substitute House Bill 352 ("SHB 352"), a bill addressing various topics related to water and sewer districts.[24] Bill reports and audio recordings from hearings on SHB 352 confirm that the bill was intended to address three separate but related topics, including two topics relevant to this Motion: (1) validating an attempted merger of a water district into a sewer district; and (2) establishing the principle that, whenever there are sewer or water districts that have common territory in the future, the district first providing the sewer or water service is the one that retains the ability to provide it.[25]

The first topic arose after a water district merged into Northwest

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[24] Substitute House Bill 352, 47th Legislature (1981), Laws of 1981, ch. 45 (included as Appendix A to this Motion).

[25] *See* Washington State Archives, House bill files for SHB 352 (included as Appendix B to this Motion); Washington State Archives, Senate bill files for SHB 352 (included as Appendix C to this Motion); Final Legislative Report, SHB 352, 47th Legislature (1981) (included as Appendix D to this Motion); Audio recordings of Hearings before House Local Government Committee (Feb. 23, 1981), available at https://www.digitalarchives.wa.gov/Record/View/50A2005355C78F507A7EAD3661D0CB98 (the "2/23/81 Audio"). Courts often use such legislative materials to help determine legislative intent. *See, e.g.*, *State v. Bash*, 130 Wn.2d 594, 601, 925 P.2d 978 (1996) (bill reports); *In re Marriage of Kovacs*, 121 Wn.2d 795, 807–08, 854 P.2d 629 (1993) (statements of individual lawmakers). *See also* Philip A. Talmadge, *A New Approach to Statutory Interpretation in Washington*, 25 Seattle U. L. Rev. 179, 203 (2001) ("The ultimate extrinsic canon of statutory interpretation is found in the materials of the legislative process itself.").

Lake Washington Sewer District, and that merger resulted in overlapping territory with Ronald Sewer District (now Ronald Wastewater District), which was already providing sewer service in the overlapping area.[26] The overlap led to litigation over whether the merger and the resulting overlap were valid, and over who had the right to provide sewer service in the overlapping area.[27] To resolve the dispute, the legislature took several steps. The legislature validated "past attempts of water districts to merge into sewer districts."[28] The legislature also validated the overlapping boundary created by the water district's merger into the Northwest Lake Washington Sewer District (and prior mergers by other entities) by adding an exception to the general prohibition on overlapping sewer district boundaries in former RCW 56.04.070 for overlaps that are created by mergers "as provided in RCW 56.36.060" (the statute authorizing such mergers).[29]

Next, to ensure that the Northwest Lake Washington Sewer District could not provide sewer service within the portion of its boundary that overlapped with Ronald's territory, the legislature amended former RCW 56.08.06 to state that, following such a merger, the sewer district may exercise sewer district powers only "in any area within its boundaries which is not part of another existing district duly authorized to exercise

[26] 2/23/81 Audio, *supra* n.25.
[27] *Id*. *See also* Appendices B–D.
[28] Appendix B at 18 (citing SHB 352, §8). *See also* Appendices C–D.
[29] SHB 352, § 3.

sewer district powers in such area."[30] And to prevent such disputes from arising in the future, the legislature also added language to RCW 36.93.090 to require BRB review for boundary changes resulting from such mergers.[31] Finally, to address competing attempts to provide service in overlapping sewer district boundaries, the legislature established a general rule that "sewer service may not be provided" in such areas by one district "without the consent by resolution of the board of commissioners of such other district."[32]

In addressing SHB 352's second topic, the legislature created a first-in-time framework that granted exclusive service area rights based on which district was the first to provide service in a particular area. One bill report notes that the second topic "[s]traightens out an emerging problem where overlapping districts currently possess common powers to provide the same utility service."[33] Section 1 of SHB 352 states that the purpose of the act is to establish "the principle that the first in time is first in right where districts overlap," and the legislative history makes it clear that the first-in-time framework gave priority to the first district to actually *provide service* to a particular area, not the first district to establish territory. One bill report states that "the first district to *provide a particular utility service* in the area has the exclusive right to provide such service";[34]

[30] Appendix B at 19 (citing SHB 352, § 7). *See also* Appendices C, D.
[31] Appendix B at 18 (citing SHB 352, § 2). *See also* Appendices C, D.
[32] SHB 352, § 4.
[33] Appendix B at12.
[34] *Id.* at 12 (emphasis added) (citing SHB 352, § 2).

testimony during a hearing on the bill states that "the district first *providing the water or sewer service* is the one that retains the ability to provide it";[35] and the final bill report states that "the first district to *provide a particular service* in the common territory has the exclusive right to continue providing the service."[36]

This focus on the provision of service is consistent with the legislature's subsequent adoption of Substitute Senate Bill 6091 ("SSB 6091") in 1996.[37] SSB 6091 addressed the issue of overlapping sewer district corporate boundaries by granting "first in time" service area rights to districts that first *provided service* in an overlapping corporate boundary area or *planned to make service available* in the overlapping area.[38] This subsequent enactment is relevant to the legislative intent behind the statutory framework surrounding sewer district boundaries.[39]

2. <u>The legislative history of SHB 1127, adopted in 1984, confirms that the legislature did not overlook potential boundary conflicts</u>.

As discussed in the Opinion and the parties' briefs, in 1984, the

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[35] 2/23/81 Audio, *supra* n.25.

[36] Appendix D at 3 (emphasis added).

[37] Substitute Senate Bill 6091, 54th Legislature (1996), Laws of 1996, ch. 230.

[38] *Id*. at § 302. Notably, the language of SSB 6091 did not limit such first-in-time rights to areas within a district's corporate boundary. As noted in the Opinion, the legislature had previously recognized in 1995 that areas outside a district's corporate boundary could be part of its "service area" for purposes of BRB review. *See id*.; Opinion at 26, n.24 (citing Laws of 1995, ch. 131, § 1).

[39] *Little v. Little*, 96 Wn.2d 183, 189, 634 P.2d 498 (1981) (holding that "[t]he entire sequence of statutes enacted by the same legislative authority, relating to the same subject matter, should be considered in placing a judicial construction upon any one of the acts," and noting that "not only prior but *subsequent statutes* may be considered for this purpose" (emphasis added) (internal citations omitted)).

legislature adopted SHB 1127, which added the judicial annexation process codified at RCW 36.94.410–.440. Before the legislature adopted SHB 1127, it heard testimony from Ron Main explaining that King County had started providing sewer service to the areas in question because no other sewer district or other entity in the area was willing to do so.[40] It also heard testimony confirming that, since King County had conducted an exhaustive survey of districts to determine which were interested in serving the areas in question, there was little potential for conflict over who would serve each area.[41] The legislative history of SHB 1127 confirms that the legislature saw the Superior Court review process as a perfectly adequate substitute for BRB review. For example, testimony during a hearing on SHB 1127 stated that the Superior Court hearing provided a "safeguard," and that if there were disputes between districts about "which district would assume the responsibility" of serving the area, then such disputes "will be heard" during the hearing.[42]

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[40] Audio recordings of Hearings before House Local Government Committee (January 17, 1984), available at: https://www.digitalarchives.wa.gov/Record/View/5811CD17A140C4B17D327CEA2A0EE439 (the "1/17/84 Audio"). As discussed in Section III.B.4 below, Olympic View had no interest in serving the Point Wells Service Area until decades later.

[41] 1/17/84 Audio, *supra* n.40.

[42] *Id*. In the Opinion, the Court stated that the legislature provided the Superior Court process "[i]n lieu of the voter approval required by former Title 56 RCW for transfers of sewer district territory" (Opinion at 7), which may be true, but the legislative history confirms that another purpose of the Superior Court process was to provide a substitute for the BRB process *Id*.

3. In 1985, the legislature amended former RCW 56.04.070 to exempt overlapping boundaries created by annexations pursuant to RCW 36.94.420 from the general prohibition on the creation of overlaps.

The following year, in 1985, the legislature adopted Senate Bill 1232 ("SB 1232"),[43] whose purpose was to "clarify overlapping jurisdictions."[44] As explained below, SB 1232 added a second exception to the general prohibition on overlapping boundaries in former RCW 56.04.070 for overlaps that are created by annexations pursuant to RCW 36.94.410–.440. In light of that exception, the *Alderwood* case is clearly distinguishable because the water district statute in that case did not contain any such express exceptions.[45]

The background section of the bill reports on SB 1232 described the transfer and annexation process authorized by RCW 36.94.410–.440, stating that "such a transfer is deemed to constitute an annexation of the area served by the sewer or water system"—repeating the unique "area served" language from RCW 36.94.420.[46] The background section also referred to the existing exception in former RCW 56.04.070 allowing for

[43] Senate House Bill 1232, 49th Legislature (1985), Laws of 1985, ch. 141 (included as Appendix E to this Motion).

[44] Washington State Archives, House bill files for SHB 1232 (included as Appendix F to this Motion) at 26. *See also* Washington State Archives, Senate bill files for SHB 1232 (included as Appendix G to this Motion); Final Legislative Report, SHB 352, 47th Legislature (1981) (included as Appendix H to this Motion); Audio recordings of Hearings before House Local Government Committee (Mar. 8, 1985), available at https://www.digitalarchives.wa.gov/Record/View/0B5D6FD833CAA245A086404485253D92 (the "3/8/85 Audio").

[45] *See Alderwood*, 62 Wn.2d at 321–33 (citing former RCW 57.04.070, which contained no exceptions).

[46] *See, e.g.*, Appendix F at 12.

overlapping district boundaries created by mergers, stating that "a sewer district *generally* cannot be created that includes territory in another sewer district," but that mergers can sometimes result in overlaps pursuant to SHB 352.[47] That report went on to summarize testimony in support of the new exception created by the bill, stating that it "clarifies existing law" and "gives water and sewer districts the needed authority to operate the water and sewer facilities a county may transfer to them."[48] Ron Main from King County, who had led the effort to pass SHB 1127, also testified in support of SB 1232.[49] Clearly, the two bills should be read together, and SB 1232 can only be understood as a clarification that annexations pursuant to SHB 1127 are not subject to the general prohibition on overlapping sewer district boundaries. Thus, far from being an "absurd" result of inept language, the legislature specifically anticipated such overlaps pursuant to SHB 1127.

4. In light of the legislative framework and history, the legislature would not have seen Ronald's annexation of the Point Wells Service Area as a "conflict."

In the Opinion, the Court cited several reasons why it believed the legislature did not intend to authorize Ronald's annexation of the Point Wells Service Area. First, the Court believed there was an inherent

[47] *See id*.

[48] *See id*. at 13.

[49] Appendix G at 9 (sign-in sheet showing Ron Main supported SB 1232). *See also* CP 1898, 1906, 1908 (sign-in sheet and other materials showing Ron Main supported SHB 1127).

conflict between SHB 1127 and former Title 56 RCW.[50] As explained above, however, there was no conflict between SHB 1127 and former Title 56 RCW because the legislature carved out annexations pursuant to SHB 1127 from the general prohibition on overlapping boundaries.

Second, the Court believed that the legislature did not intend to authorize annexations "within another county."[51] That belief is incorrect. As explained above, the legislature had already authorized annexations across county lines that would result in "multi-county districts."[52] The legislature is presumed to be aware of its prior enactments,[53] so the Court should presume the legislature knew that annexations of land could include land outside the county in which the district is located, and that the legislature would not have seen Ronald's crossing of the King-Snohomish boundary as a "conflict."

Nor would the legislature have seen a conflict in the fact that Ronald sought to annex territory that was not previously part of King County's corporate boundary when it operated King County Sewer District #3. As noted above, the annexation provisions of RCW 36.94.440 did not rely on a "transfer" of territory from a county to a district. Instead, the legislature used unique language that authorized annexation of the "area served by the system"—language that was read aloud during

[50] Opinion at 23–25.

[51] *Id*. at 24.

[52] *See* Ronald's Response Brief at 3-5 (citing Engrossed Substitute Senate Bill 542 (1971) (bill text at CP 1780-91), Senate Bill 2945 (1975) (bill text at CP 1792-95), and House Bill 1145 (1982) (bill text at CP 1812-36; legislative history at CP 1837-61)).

[53] *Ashenbrenner v. Dep't of Labor & Indus*., 62 Wn.2d 22, 27, 380 P.2d 730 (1963).

committee hearings on SHB 1127,[54] and was repeated in the bill reports for SB 1232.[55] Rules of statutory construction require the Court to presume that, if the legislature had intended to limit annexations to the "area served" that is "within the boundaries of the county making the transfer," as suggested by the Court,[56] it would have used that kind of express language—which is used elsewhere in the statutory framework.[57]

The Court also pointed to "[t]he exemption from boundary review board review in SHB 1127" as supporting its application of the "absurd results" canon.[58] The Court's analysis of the BRB issue, however, was based primarily on the assumption that the legislature had inadvertently overlooked potential "boundary issues" between two sewer districts, which it did not as explained above.[59] Moreover, as explained above, the legislative history of SHB 1127 confirms that the legislature viewed the

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[54] 1/17/84 Audio, *supra* n.40.

[55] *See, e.g.*, Appendix F at 12.

[56] *See* Opinion at 27.

[57] *See* Section II, *supra. See also Lundberg ex rel. Orient Found. v. Coleman*, 115 Wn. App. 172, 177, 60 P.3d 595 (2002) (holding that, "where the Legislature uses language in one instance but different language in another in dealing with similar subjects, a difference in legislative intent is indicated"). For example, when the legislature wanted to limit the authority of a merged district in an overlapping area, the legislature referred specifically to an area "within its boundaries which is not part of another existing district duly authorized to exercise sewer district powers in such area." SHB 352, § 7. Similarly, when the legislature wanted to limit the geographic area of transfers from districts to counties in 1975, it used language that specifically limited such transfers to a transfer from a district "to the county within which all of its territory lies." ESSB 2737, § 7.

[58] *See* Opinion at 25–27.

[59] To support its conclusion that the legislature did not mean to exempt this type of annexation from BRB review, the Court also cited former RCW 56.02.060, but that statute does not apply here. *See* Opinion at 25 (emphasis added). That statute applies only to annexations "under [former]chapter 56.24 RCW," not to annexations pursuant to RCW 36.94.410–.440.

Superior Court review process as a perfectly adequate substitute for BRB review.[60]

Finally, to support its statement that "[t]he statutory scheme for sewer districts is clearly intended to avoid overlapping boundaries of sewer districts," the Court cited Section 4 of SHB 352, which requires consent via resolution before a sewer district may provide service in an overlapping area.[61] As explained above, however, the statutory scheme specifically authorized the creation of overlapping boundaries pursuant to RCW 36.94.410–.440. In light of the legislative history, the language in Section 4 of SHB 352 was clearly intended to address *conflicting attempts to provide service within overlapping areas*, not to prohibit the creation of overlapping boundaries.

It is true that Olympic View did not provide its consent via resolution before Ronald took over sewer service to the Point Wells Service Area on January 1, 1986. However, sewer service was already being provided to the Point Wells Service Area when SHB 352 was passed in 1981.[62] SHB 352 was not retroactive, so it did not require consent for service that was previously established pursuant to contracts that were already in place before the passage of SHB No. 352.[63] Moreover, it is undisputed that Olympic View raised no objection to Ronald's provision

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[60] *See* Section III.B.2, *supra*.

[61] Opinion at 23.

[62] *See* Opinion at 4–10; CP 900-14; CP 237; CP 63.

[63] *See Bayless v. Cmty. Coll. Dist. No. XIX*, 84 Wn. App. 309, 312, 927 P.2d 254 (1996) ("The general rule is that, absent contrary legislative intent, statutes are presumed to operate prospectively only.").

of service to the area during the 1980s, the 1990s, or the 2000s.[64] And Olympic View did, in fact, consent to Ronald's provision of sewer service when it adopted, *by resolution*, the service area map in its 2007 comprehensive sewer plan recognizing the entire Point Wells Service Area as "served by Ronald Wastewater District."[65] Thus, to the extent that Olympic View had any right in 1986 to object to Ronald's provision of service to the Point Wells Area pursuant to SHB 352,[66] Olympic View would now be precluded from asserting any such right due to its statutory consent pursuant to SHB No. 352, given in 2007, and also under the common law doctrines of waiver, laches, and estoppel.[67]

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[64] *See* CP 1400–1403, 1415–1464; CP 3048 (2013 Olympic View letter to Ronald expressing, for the first time, a desire to provide sewer service to the Point Wells Service Area).

[65] CP 1448 (service area map from Olympic View's 2007 comprehensive sewer plan) (included as Appendix I to this Motion); CP 7110 (letter acknowledging that 2007 plan was adopted "by resolution"); RCW 57.16.010(7) ("Any general comprehensive plan or plans shall be adopted by resolution . . ."). Notably, that 2007 service area map was adopted after Olympic View's Board engaged in extensive discussions with Ronald to confirm which areas would be served by each district. CP 7090–7110.

[66] It is unclear whether Olympic View had any right to object pursuant to SHB 352, even back in 1986. The language in Section 4 of SHB 352 requiring consent must be read in conjunction with Section 1, which established the principle that the first district to provide service in a particular area had the exclusive right to continue providing such service. If there is any role for an implied exception to the statutory language in this case, it would be to construe the consent requirement as applying only when one of the two districts in the overlapping area has not already begun providing service. In all other cases, the consent requirement would arguably serve no purpose because the first-in-time framework in Section 1 would resolve any dispute in the overlapping area.

[67] See Ronald's Response Brief at 33–35 (citing elements of laches and estoppel); *Wagner v. Wagner*, 95 Wn.2d 94, 102, 621 P.2d 1279, 1283 (1980) (common law waiver is "the intentional relinquishment of a known right").

5. In light of the legislative framework and history, the Court must modify the Opinion to avoid violating rules of statutory construction.

It is understandable why, without the benefit of briefing on the relevant legal framework and legislative history, the Court believed that the legislature would have viewed Ronald's annexation of the Point Wells Service Area as "absurd." In light of this Motion, however, rules of statutory construction now require the Court to modify the Opinion to confirm the validity of the Transfer Order.

As explained above in Section A, if a result is "conceivable," it is not absurd.[68] Ronald believes that, in light of the legislative history discussed in this Motion, the legislature most likely intended to allow the type of annexation that Ronald accomplished through RCW 36.94.410–.440. In the 1980s, unlike today, sewer service was still unavailable in many areas of Puget Sound, and the legislature was concerned about ensuring that sewer service was provided wherever it was desired. Accordingly, Ronald believes that, when the legislature authorized annexations pursuant to SHB 1127 in 1984 and then clarified that such annexations are not subject to the general prohibition on overlapping sewe district boundaries, the legislature was intentionally prioritizing the actual provision of sewer service over the general goal of preventing overlaps between sewer district boundaries. In any case, it is certainly *conceivable* that the legislature had such an intention.

Moreover, there is no indication in the legislative text or history

[68] *Five Corners Family Farmers*, 173 Wn.2d at 311; *Ervin*, 169 Wn.2d at 824.

that the legislature ever intended to protect the right of a sewer district to do what Olympic View seeks to do here: first, decline to provide service to a portion of its service area; sit on its rights while a different district provides sewer service to that area, made major investments in the area, and adopted formal plans to serve future development in the area; consent to that district's service in the area by adopting a comprehensive sewer plan showing the area as outside of its service area and within another district's service area; and then, decades later, assert it has the right to displace the other district and take over service in the area. If any result is inconceivable, it is what Olympic View seeks today, not what Ronald sought in 1985. Thus, even if the Court believes the result Ronald seeks is an "unlikely" result, the result that Olympic View seeks is even less likely, and must therefore be rejected.[69]

Therefore, the Court must apply the plain language of the statutory framework, which authorized annexations without any geographical limitation, including annexations that created overlaps and annexed territory outside the boundaries of the county in question. Any other reading of the statutory framework would conflict with rules of statutory construction and raise separation of powers concerns. For these reasons, the Court should modify the Opinion to confirm the validity and finding effect of the Transfer Order.[70]

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[69] *See Ervin*, 169 Wn.2d at 824.

[70] The Court's analysis of the subject matter jurisdiction issue was premised on the notion that the statutory phrase "area served" is limited to "the area within the borders of the county making the transfer," which is incorrect as explained above. *See* Opinion at 30.

C. The Court Should Clarify that the Opinion Does Not Address Issues Related to Events that Occurred after the Entry of the Transfer Order.

Even if the Court declines to modify its decision regarding the validity of the 1985 Transfer Order, the Court should clarify that the Opinion addresses the status of Ronald's corporate boundary "based on the Transfer Order"[71] *only*, and does not address any issues related to events that occurred after the entry of the Transfer Order. Those issues are not before this Court, and the Court's findings do not address key events that occurred between 2007 and 2015.[72]

For example, the Opinion does not address any of the facts or legal issues surrounding Ronald's position that its annexation of the Point Wells Service Area was validated under the "doctrine of acquiescence" as a result of actions taken by the Snohomish County parties after the entry of the Transfer Order, such as Olympic View's adoption of its 2007 service area map consenting to Ronald's provision of service to the Point Wells Service Area.[73] To avoid misunderstanding or misrepresentation of this Court's ruling, the Court should clarify that the Opinion does not address

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Therefore, the Court should also modify the Opinion to confirm that the Superior Court has subject matter jurisdiction to enter the Transfer Order.

[71] *See* Opinion at 3, n.26.

[72] *See id.* at 10 (reciting facts from 2007 and 2015, without discussing facts from the intervening time period).

[73] Ronald's Response Brief at 35 (citing *Town of Ruston v. City of Tacoma*, 90 Wn. App. 75, 88, 951 P.2d 805 (1998) (quoting *La Porto v. Vill. of Philmont*, 39 N.Y.2d 7, 11, 346 N.E.2d 503, 382 N.Y.S.2d 703 (1976) (emphasis added). As explained in Ronald's response brief, the doctrine of acquiescence "is of particular importance in, and indeed, is predicated upon, the situation in which 'personal, civil and political rights have become fixed according to the boundaries *established by usage*.'" *Id*.

that question or other similar issues relating to events that occurred after the entry of the Transfer Order. [74]

Ronald also asks the Court to confirm that the Opinion does not address issues related to whether, based on events that occurred after the entry of the Transfer Order, Ronald *currently* has the right to continue providing service to the Point Wells Service Area (assuming the Transfer Order is void). Counsel for Olympic View has already publicly claimed that the Opinion broadly found that Olympic View "never" provided any consent to Ronald's provision of sewer service to the Point Wells Service Area.[75] Yet the Opinion includes no such finding[76] and, as explained above, Olympic View's claim is false: Olympic View specifically consented to Ronald's service to the area when it adopted the service area map in its 2007 comprehensive plan.[77] However, if Olympic View were successful in misrepresenting the Opinion in a future proceeding, it might try to assert that this Court's findings regarding "consent" require Ronald

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[74] In the Opinion, the Court stated that the doctrine of acquiescence could not be used to bar the Snohomish County parties from asserting that the Transfer Order is void, but the Court did not address the question of whether, based on events that occurred after entry of the Transfer Order, Ronald's annexation of the Point Wells Service Area was validated under the doctrine of acquiescence. *See* Opinion at 31, n.25.

[75] *See* Talmadge Fitzpatrick, https://www.tal-fitzlaw.com/washington-appeals-decisions.php (last visited July 22, 2019).

[76] The Opinion includes several statements about consent, but none of them indicate or imply that Olympic View "never" consented to Ronald's service to the Point Wells Service Area. *See* Opinion at 5, 5, n.7, 24.

[77] Indeed, as a result of proceedings before the Growth Management Hearings Board in which the Board held that Olympic View's attempt to add the Point Wells Service Area violated the GMA, that 2007 service area map is still in effect today. CP 1542–78. *See also* Ronald's Statement of Additional Authority (citing Superior Court judgments dismissing appeals of the Board's decisions with prejudice).

to immediately stop providing sewer service to the Point Wells Service Area pursuant to Section 4 of SHB 352. The Court should avoid confusion over these types of issues by clarifying that the Opinion is limited to evaluating the validity of the Transfer Order, not issues related to events that happened later. Without further guidance, the parties are left to speculate as to the practical outcome of the Opinion.

IV. CONCLUSION

For these reasons, Ronald respectfully asks the Court to modify the Opinion to confirm the validity and binding effect of the Transfer Order. Alternatively, the Court should clarify that the Opinion does not address issues related to events that happened after entry of the Transfer Order. Finally, if the Court requests an answer to this Motion pursuant to RAP 12.4(d), Ronald respectfully asks that it be allowed to file a reply.

Respectfully submitted this 22nd day of July, 2019.

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INDEX OF APPENDICES

APPENDIX A

(8) "State" includes any state, district, commonwealth, territory, insular possession, and any other area subject to the legislative authority of the United States of America.

Passed the House March 24, 1981.
Passed the Senate April 11, 1981.
Approved by the Governor April 22, 1981.
Filed in Office of Secretary of State April 22, 1981.

CHAPTER 45

[Substitute House Bill No. 352]

SEWER AND WATER DISTRICTS——SERVICE AND BONDING AUTHORITY

AN ACT Relating to special purpose districts; amending section 9, chapter 189, Laws of 1967 as last amended by section 12, chapter 5, Laws of 1979 ex. sess. and RCW 36.93.090; amending section 5, chapter 210, Laws of 1941 and RCW 56.04.070; amending section 48, chapter 210, Laws of 1941 as last amended by section 3, chapter 103, Laws of 1959 and RCW 56.08.060; amending section 4, chapter 58, Laws of 1974 ex. sess. as last amended by section 1, chapter 12, Laws of 1980 and RCW 56.20.015; amending section 4, chapter 148, Laws of 1969 ex. sess. and RCW 56.36.040; amending section 6, chapter 148, Laws of 1969 ex. sess. and RCW 56.36.060; amending section 4, chapter 114, Laws of 1929 and RCW 57.04.070; amending section 3, chapter 251, Laws of 1953 as amended by section 4, chapter 108, Laws of 1959 and RCW 57.08.045; amending section 1, chapter 111, Laws of 1963 as last amended by section 69, chapter 141, Laws of 1979 and RCW 57.08.065; amending section 4, chapter 146, Laws of 1971 ex. sess. and RCW 57.40.130; amending section 6, chapter 146, Laws of 1971 ex. sess. and RCW 57.40.150; adding a new section to chapter 56.36 RCW; creating a new section; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Section 1. It is declared to be the public policy of the state of Washington to provide for the orderly growth and development of those areas of the state requiring public water service or sewer service and to secure the health and welfare of the people residing therein. The growth of urban population and the movement of people into suburban areas has required the performance of such services by water districts and sewer districts and the development of such districts has created problems of conflicting jurisdiction and potential double taxation.

It is the purpose of this act to reduce the duplication of service and the conflict among jurisdictions by establishing the principle that the first in time is the first in right where districts overlap and by encouraging the consolidation of districts. It is also the purpose of this act to prevent the imposition of double taxation upon the same property by establishing a general classification of property which will be exempt from property taxation by a district when such property is within the jurisdiction of an established district duly authorized to provide service of like character.

Unless the context clearly requires otherwise, as used in this act, the term "district" means either a water district organized under Title 57 RCW or a sewer district organized under Title 56 RCW or a merged water and sewer district organized pursuant to chapter 57.40 or 56.36 RCW.

Sec. 2. Section 9, chapter 189, Laws of 1967 as last amended by section 12, chapter 5, Laws of 1979 ex. sess. and RCW 36.93.090 are each amended to read as follows:

Whenever any of the following described actions are proposed in a county in which a board has been established, the initiators of the action shall file a notice of intention with the board, which may review any such proposed actions pertaining to:

(1) The creation, dissolution, incorporation, disincorporation, consolidation, or change in the boundary of any city, town, or special purpose district, except that a board may not review the dissolution or disincorporation of a special purpose district which was dissolved or disincorporated pursuant to the provisions of chapter 36.96 RCW; or

(2) The assumption by any city or town of all or part of the assets, facilities, or indebtedness of a special purpose district which lies partially within such city or town; or

(3) The establishment of or change in the boundaries of a mutual water and sewer system or separate sewer system by a water district pursuant to RCW 57.08.065 or chapter 57.40 RCW, as now or hereafter amended; or

(4) The establishment of or change in the boundaries of a mutual sewer and water system or separate water system by a sewer district pursuant to RCW 56.20.015 or chapter 56.36 RCW, as now or hereafter amended; or

(5) The extension of permanent water or sewer service outside of its existing corporate boundaries by a city, town, or special purpose district.

Sec. 3. Section 5, chapter 210, Laws of 1941 and RCW 56.04.070 are each amended to read as follows:

Whenever two or more petitions for the formation of a sewer district shall be filed as ((~~herein~~)) provided in this chapter, the petition describing the greater area shall supersede all others, and an election shall first be held thereunder, and no lesser sewer district shall ever be created within the limits in whole or in part of any other sewer district, except as provided in RCW 56.36.060, as now or hereafter amended.

Sec. 4. Section 48, chapter 210, Laws of 1941 as last amended by section 3, chapter 103, Laws of 1959 and RCW 56.08.060 are each amended to read as follows:

A sewer district may enter into contracts with any county, city, town, sewer district, water district, or any other municipal corporation, or with any private person, firm or corporation, for the acquisition, ownership, use, and operation of any property, facilities, or services, within or without the sewer district and necessary or desirable to carry out the purposes of the sewer district, and a sewer district or a water district duly authorized to exercise sewer district powers may provide sewer service to property owners ((~~outside~~)) in areas within or without the limits of the ((~~sewer~~)) district: PROVIDED, That if any such area is located within another existing district duly authorized to exercise sewer district powers in such area, then

sewer service may not be so provided by contract or otherwise without the consent by resolution of the board of commissioners of such other district.

Sec. 5. Section 4, chapter 58, Laws of 1974 ex. sess. as last amended by section 1, chapter 12, Laws of 1980 and RCW 56.20.015 are each amended to read as follows:

In addition to all of the powers and authorities set forth in Title 56 RCW, any sewer district shall have all of the powers of cities as set forth in chapter 35.44 RCW. Sewer districts may also exercise all of the powers permitted to a water district under Title 57 RCW, except that a sewer district may not exercise water district powers in any area within its boundaries which is part of an existing district which previously shall have been duly authorized to exercise water district powers in such area without the consent by resolution of the board of commissioners of such district.

A sewer district shall have the power to issue general obligation bonds for water system purposes: PROVIDED, That a proposition to authorize general obligation bonds payable from excess tax levies for water system purposes pursuant to chapters 57.16 and 57.20 RCW shall be submitted to all of the qualified voters within that part of the sewer district which is not contained within another existing district duly authorized to exercise water district powers, and the taxes to pay the principal of and interest on the bonds approved by such voters shall be levied only upon all of the taxable property within such part of the sewer district.

Sec. 6. Section 4, chapter 148, Laws of 1969 ex. sess. and RCW 56.36-.040 are each amended to read as follows:

If at such election a majority of the voters in the water district or all or either of the water districts involved, shall vote in favor of the merger, the county election canvassing board shall so declare in its canvass, and the return of the election shall be made within ten days after the date of such election. Upon completion of the return the merger shall be effective as to the sewer district and each water district in which the majority of voters voted in favor of the merger, and each such water district shall cease to exist as a separate entity and the area within such water district shall become a part of the sewer district. The water commissioners of any water district so merged shall cease to hold office, and the affairs of the merged districts shall be managed and conducted by the board of sewer commissioners of the sewer district, the members of which shall thereafter be elected in the manner provided in RCW 56.12.030.

Sec. 7. Section 6, chapter 148, Laws of 1969 ex. sess. and RCW 56.36-.060 are each amended to read as follows:

Following merger, the sewer district and the board of commissioners thereof shall have all powers granted sewer districts by RCW 56.08.060 and 56.20.015 and shall have all other powers granted sewer districts by Title 56 RCW in any area within its boundaries which is not part of another existing

district duly authorized to exercise sewer district powers in such area and shall have all powers granted water districts by RCW 57.08.045 and 57.08-.065 and shall have all other powers granted water districts by Title 57 RCW in any area within its boundaries which is not part of another existing district duly authorized to exercise water district powers in such area. The sewer district shall have the power to issue revenue bonds to which are pledged water revenue, sewer revenue, or both water and sewer revenue, as well as the power to levy assessments against property specially benefited in ((~~the manner levied by~~)) local improvement districts or utility local improvement districts, for improvements to the water system or the sewer system or both.

NEW SECTION. Sec. 8. There is added to chapter 56.36 RCW a new section to read as follows:

Each and all of the respective areas of land organized as a water district and heretofore attempted to be merged into a sewer district under chapter 148 of the Laws of 1969, and amendments thereto, and which have maintained their organization as part of a sewer district since the date of such attempted merger, are hereby validated and declared to be a proper merger of a water district into a sewer district. Such district shall have the respective boundaries set forth in their merger proceedings as shown by the official files of the legislative authority of the county in which such merged district is located. All debts, contracts, bonds, and other obligations heretofore executed in connection with or in pursuance of such attempted organization, and any and all assessments or levies and all other actions taken by such districts or by their respective officers acting under such attempted organization, are hereby declared legal and valid and of full force and effect. Such districts may hereafter exercise their powers only to the extent permitted by and in accordance with the provisions of RCW 56.36.060, as now or hereafter amended.

Sec. 9. Section 4, chapter 114, Laws of 1929 and RCW 57.04.070 are each amended to read as follows:

Whenever two or more petitions for the formation of a water district shall be filed as ((~~herein~~)) provided in this chapter, the petition describing the greater area shall supersede all others and an election shall first be held thereunder, and no lesser water district shall ever be created within the limits in whole or in part of any water district, except as provided in RCW 57.40.150, as now or hereafter amended.

Sec. 10. Section 3, chapter 251, Laws of 1953 as amended by section 4, chapter 108, Laws of 1959 and RCW 57.08.045 are each amended to read as follows:

A water district may enter into contracts with any county, city, town, sewer district, water district, or any other municipal corporation, or with any private person or corporation, for the acquisition, ownership, use and

operation of any property, facilities, or services, within or without the water district and necessary or desirable to carry out the purposes of the water district, and a water district or sewer district duly authorized to exercise water district powers may provide water services to property owners ((~~outside~~)) in areas within or without the limits of the ((~~water~~)) district: PROVIDED, That if such area is located within another existing district duly authorized to exercise water district powers in such area, then water service may not be so provided by contract or otherwise without the consent by resolution of the board of commissioners of such other district.

Sec. 11. Section 1, chapter 111, Laws of 1963 as last amended by section 69, chapter 141, Laws of 1979 and RCW 57.08.065 are each amended to read as follows:

In addition to the powers now given water districts by law, they shall also have power to establish, maintain and operate a mutual water and sewer system or a separate sewer system within their water district area in the same manner as provided by law for the doing thereof in connection with water supply systems.

In addition thereto, a water district constructing, maintaining and operating a sanitary sewer system may exercise all the powers permitted to a sewer district under Title 56 RCW, including, but not limited to, the right to compel connections to the district's system, liens for delinquent sewer connection charges or sewer service charges, and all other powers presently exercised by or which may be hereafter granted to such sewer districts: PROVIDED, That a water district may not exercise sewer district powers in any area within its boundaries which is part of an existing district which previously shall have been duly authorized to exercise sewer district powers in such area without the consent by resolution of the board of commissioners of such other district: PROVIDED FURTHER, That no water district shall proceed to exercise the powers herein granted to establish, maintain, construct and operate any sewer system without first obtaining written approval and certification of necessity so to do from the department of ecology and department of social and health services. Any comprehensive plan for a system of sewers or addition thereto or betterment thereof shall be approved by the same county and state officials as are required to approve such plans adopted by a sewer district.

A water district shall have the power to issue general obligation bonds for sewer system purposes: PROVIDED, That a proposition to authorize general obligation bonds payable from excess tax levies for sewer system purposes pursuant to chapter 56.16 RCW shall be submitted to all of the qualified voters within that part of the water district which is not contained within another existing district duly authorized to exercise sewer district powers, and the taxes to pay the principal of and interest on the bonds approved by such voters shall be levied only upon all of the taxable property within such part of the water district.

Sec. 12. Section 4, chapter 146, Laws of 1971 ex. sess. and RCW 57-.40.130 are each amended to read as follows:

If at such election a majority of the voters in the sewer district or all or either of the sewer districts involved, shall vote in favor of the merger, the county election canvassing board shall so declare in its canvass, and the return of the election shall be made within ten days after the date of such election. Upon completion of the return the merger shall be effective as to the water district and each sewer district in which the majority of voters voted in favor of the merger, and each such sewer district shall cease to exist as a separate entity and the area within such sewer district shall become a part of the water district. The sewer commissioners of any sewer district so merged shall cease to hold office, and the affairs of the merged districts shall be managed and conducted by the board of water commissioners of the water district, the members of which shall thereafter be elected in the manner provided by RCW 57.12.020.

Sec. 13. Section 6, chapter 146, Laws of 1971 ex. sess. and RCW 57-.40.150 are each amended to read as follows:

Following merger, the water district and the board of commissioners thereof shall have all powers granted water districts by RCW 57.08.045 and 57.08.065 and shall have all other powers granted water districts by Title 57 RCW in any area within its boundaries which is not part of another existing district duly authorized to exercise water district powers in such area and shall have all powers granted sewer districts by RCW 56.08.060 and 56.20-.015 and shall have all other power granted sewer districts by Title 56 RCW in any area within its boundaries which is not part of another existing district duly authorized to exercise sewer district powers in such area. The water district shall have the power to issue revenue bonds to which are pledged sewer revenue, water revenue, or both sewer and water revenue, as well as the power to levy assessments against property specially benefited in ((~~the manner levied by~~)) local improvement districts or utility local improvement districts, for improvements to the sewer system or the water system or both.

NEW SECTION. Sec. 14. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 15. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state

government and its existing public institutions, and shall take effect immediately.

Passed the House March 17, 1981.
Passed the Senate April 13, 1981.
Approved by the Governor April 22, 1981.
Filed in Office of Secretary of State April 22, 1981.

CHAPTER 46

[House Bill No. 438]

PUBLIC WORKS CONTRACTORS——PREVAILING WAGE STATEMENTS

AN ACT Relating to public works; amending section 1, chapter 63, Laws of 1945 as amended by section 1, chapter 14, Laws of 1967 ex. sess. and RCW 39.12.020; and amending section 4, chapter 63, Laws of 1945 as last amended by section 1, chapter 49, Laws of 1975–'76 2nd ex. sess. and RCW 39.12.040.

Be it enacted by the Legislature of the State of Washington:

Section 1. Section 1, chapter 63, Laws of 1945 as amended by section 1, chapter 14, Laws of 1967 ex. sess. and RCW 39.12.020 are each amended to read as follows:

The hourly wages to be paid to laborers, workmen or mechanics, upon all public works and under all public building service maintenance contracts of the state or any county, municipality or political subdivision created by its laws, shall be not less than the prevailing rate of wage for an hour's work in the same trade or occupation in the locality within the state where such labor is performed. For a contract in excess of ten thousand dollars, a contractor required to pay the prevailing rate of wage shall post in a location readily visible to workers at the job site:

(1) A copy of a statement of intent to pay prevailing wages approved by the industrial statistician of the department of labor and industries under RCW 39.12.040; and

(2) The address and telephone number of the industrial statistician of the department of labor and industries where a complaint or inquiry concerning prevailing wages may be made.

This chapter shall not apply to workmen or other persons regularly employed on monthly or per diem salary by the state, or any county, municipality, or political subdivision created by its laws.

Sec. 2. Section 4, chapter 63, Laws of 1945 as last amended by section 1, chapter 49, Laws of 1975–'76 2nd ex. sess. and RCW 39.12.040 are each amended to read as follows:

Before payment is made by or on behalf of the state, or any county, municipality, or political subdivision created by its laws, of any sum or sums due on account of a public works contract, it shall be the duty of the officer or person charged with the custody and disbursement of public funds to require the contractor and each and every subcontractor from the contractor

APPENDIX B

IN THE LEGISLATURE
of the
STATE OF WASHINGTON

CERTIFICATION OF ENROLLED ENACTMENT

SUBSTITUTE HOUSE BILL NO. 352

CHAPTER NO. .....

Passed the House March 17, 1981

Yeas 98 *Nays* 0

Passed the Senate April 13, 1981

Yeas 46 *Nays* 1

CERTIFICATION

I, Vito T. Chiechi, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is enrolled Substitute House Bill No. 352 *as passed by the House of Representatives and the Senate on the dates hereon set forth.*

Vito T. Chiechi *Chief Clerk*

A-070

required the performance of such services by water districts and sewer districts and the development of such districts has created problems of conflicting jurisdiction and potential double taxation.

It is the purpose of this act to reduce the duplication of service and the conflict among jurisdictions by establishing the principle that the first in time is the first in right where districts overlap and by encouraging the consolidation of districts. It is also the purpose of this act to prevent the imposition of double taxation upon the same property by establishing a general classification of property which will be exempt from property taxation by a district when such property is within the jurisdiction of an established district duly authorized to provide service of like character.

Unless the context clearly requires otherwise, as used in this act, the term "district" means either a water district organized under Title 57 RCW or a sewer district organized under Title 56 RCW or a merged water and sewer district organized pursuant to chapter 57.40 or 56.36 RCW.

Sec. 2. Section 9, chapter 189, Laws of 1967 as last amended by section 12, chapter 5, Laws of 1979 ex. sess. and RCW 36.93.090 are each amended to read as follows:

Whenever any of the following described actions are proposed in a county in which a board has been established, the initiators of the action shall file a notice of intention with the board, which may review any such proposed actions pertaining to:

(1) The creation, dissolution, incorporation, disincorporation, consolidation, or change in the boundary of any city, town, or special purpose district, except that a board may not review the dissolution or disincorporation of a special purpose district which was dissolved or disincorporated pursuant to the provisions of chapter 36.96 RCW; or

(2) The assumption by any city or town of all or part of the assets, facilities, or indebtedness of a special purpose

district which lies partially within such city or town; or

(3) The establishment of or change in the boundaries of a mutual water and sewer system or separate sewer system by a water district pursuant to RCW 57.08.065 or chapter 57.40 RCW, as now or hereafter amended; or

(4) The establishment of or change in the boundaries of a mutual sewer and water system or separate water system by a sewer district pursuant to RCW 56.20.015 or chapter 56.36 RCW, as now or hereafter amended; or

(5) The extension of permanent water or sewer service outside of its existing corporate boundaries by a city, town, or special purpose district.

Sec. 3. Section 5, chapter 210, Laws of 1941 and RCW 56.04.070 are each amended to read as follows:

Whenever two or more petitions for the formation of a sewer district shall be filed as ((herein)) provided in this chapter, the petition describing the greater area shall supersede all others, and an election shall first be held thereunder, and no lesser sewer district shall ever be created within the limits in whole or in part of any other sewer district, except as provided in RCW 56.36.060, as now or hereafter amended.

Sec. 4. Section 48, chapter 210, Laws of 1941 as last amended by section 3, chapter 103, Laws of 1959 and RCW 56.08.060 are each amended to read as follows:

A sewer district may enter into contracts with any county, city, town, sewer district, water district, or any other municipal corporation, or with any private person, firm or corporation, for the acquisition, ownership, use, and operation of any property, facilities, or services, within or without the sewer district and necessary or desirable to carry out the purposes of the sewer district, and a sewer district or a water district duly authorized to exercise sewer district powers may provide sewer service to property owners ((outside)) in areas within or without the limits of the ((sewer)) district:

PROVIDED, That if any such area is located within another existing district duly authorized to exercise sewer district powers in such area, then sewer service may not be so provided by contract or otherwise without the consent by resolution of the board of commissioners of such other district.

Sec. 5. Section 4, chapter 58, Laws of 1974 ex. sess. as last amended by section 1, chapter 12, Laws of 1980 and RCW 56.20.015 are each amended to read as follows:

In addition to all of the powers and authorities set forth in Title 56 RCW, any sewer district shall have all of the powers of cities as set forth in chapter 35.44 RCW. Sewer districts may also exercise all of the powers permitted to a water district under Title 57 RCW, except that a sewer district may not exercise water district powers in any area within its boundaries which is part of an existing district which previously shall have been duly authorized to exercise water district powers in such area without the consent by resolution of the board of commissioners of such district.

A sewer district shall have the power to issue general obligation bonds for water system purposes: PROVIDED, That a proposition to authorize general obligation bonds payable from excess tax levies for water system purposes pursuant to chapters 57.16 and 57.20 RCW shall be submitted to all of the qualified voters within that part of the sewer district which is not contained within another existing district duly authorized to exercise water district powers, and the taxes to pay the principal of and interest on the bonds approved by such voters shall be levied only upon all of the taxable property within such part of the sewer district.

Sec. 6. Section 4, chapter 148, Laws of 1969 ex. sess. and RCW 56.36.040 are each amended to read as follows:

If at such election a majority of the voters in the water district or all or either of the water districts involved, shall vote in favor of the merger, the county election canvassing board shall so declare in its canvass, and the return of the

election shall be made within ten days after the date of such election. Upon completion of the return the merger shall be effective as to the sewer district and each water district in which the majority of voters voted in favor of the merger, and each such water district shall cease to exist as a separate entity and the area within such water district shall become a part of the sewer district. The water commissioners of any water district so merged shall cease to hold office, and the affairs of the merged districts shall be managed and conducted by the board of sewer commissioners of the sewer district, the members of which shall thereafter be elected in the manner provided in RCW 56.12.030.

Sec. 7. Section 6, chapter 148, Laws of 1969 ex. sess. and RCW 56.36.060 are each amended to read as follows:

Following merger, the sewer district and the board of commissioners thereof shall have all powers granted sewer districts by RCW 56.08.060 and 56.20.015 and shall have all other powers granted sewer districts by Title 56 RCW in any area within its boundaries which is not part of another existing district duly authorized to exercise sewer district powers in such area and shall have all powers granted water districts by RCW 57.08.045 and 57.08.065 and shall have all other powers granted water districts by Title 57 RCW in any area within its boundaries which is not part of another existing district duly authorized to exercise water district powers in such area. The sewer district shall have the power to issue revenue bonds to which are pledged water revenue, sewer revenue, or both water and sewer revenue, as well as the power to levy assessments against property specially benefited in ((the-manner-levied-by)) local improvement districts or utility local improvement districts, for improvements to the water system or the sewer system or both.

NEW SECTION. Sec. 8. There is added to chapter 56.36 RCW a new section to read as follows:

Each and all of the respective areas of land organized as

a water district and heretofore attempted to be merged into a sewer district under chapter 148 of the Laws of 1969, and amendments thereto, and which have maintained their organization as part of a sewer district since the date of such attempted merger, are hereby validated and declared to be a proper merger of a water district into a sewer district. Such district shall have the respective boundaries set forth in their merger proceedings as shown by the official files of the legislative authority of the county in which such merged district is located. All debts, contracts, bonds, and other obligations heretofore executed in connection with or in pursuance of such attempted organization, and any and all assessments or levies and all other actions taken by such districts or by their respective officers acting under such attempted organization, are hereby declared legal and valid and of full force and effect. Such districts may hereafter exercise their powers only to the extent permitted by and in accordance with the provisions of RCW 56.36.060, as now or hereafter amended.

Sec. 9. Section 4, chapter 114, Laws of 1929 and RCW 57.04.070 are each amended to read as follows:

Whenever two or more petitions for the formation of a water district shall be filed as ((herein)) provided in this chapter, the petition describing the greater area shall supersede all others and an election shall first be held thereunder, and no lesser water district shall ever be created within the limits in whole or in part of any water district, except as provided in RCW 57.40.150, as now or hereafter amended.

Sec. 10. Section 3, chapter 251, Laws of 1953 as amended by section 4, chapter 108, Laws of 1959 and RCW 57.08.045 are each amended to read as follows:

A water district may enter into contracts with any county, city, town, sewer district, water district, or any other municipal corporation, or with any private person or corporation, for the acquisition, ownership, use and operation

of any property, facilities, or services, within or without the water district and necessary or desirable to carry out the purposes of the water district, and a water district or sewer district duly authorized to exercise water district powers may provide water services to property owners ((outside)) in areas within or without the limits of the ((water)) district: PROVIDED, That if such area is located within another existing district duly authorized to exercise water district powers in such area, then water service may not be so provided by contract or otherwise without the consent by resolution of the board of commissioners of such other district.

Sec. 11. Section 1, chapter 111, Laws of 1963 as last amended by section 69, chapter 141, Laws of 1979 and RCW 57.08.065 are each amended to read as follows:

In addition to the powers now given water districts by law, they shall also have power to establish, maintain and operate a mutual water and sewer system or a separate sewer system within their water district area in the same manner as provided by law for the doing thereof in connection with water supply systems.

In addition thereto, a water district constructing, maintaining and operating a sanitary sewer system may exercise all the powers permitted to a sewer district under Title 56 RCW, including, but not limited to, the right to compel connections to the district's system, liens for delinquent sewer connection charges or sewer service charges, and all other powers presently exercised by or which may be hereafter granted to such sewer districts: PROVIDED, That a water district may not exercise sewer district powers in any area within its boundaries which is part of an existing district which previously shall have been duly authorized to exercise sewer district powers in such area without the consent by resolution of the board of commissioners of such other district: PROVIDED FURTHER, That no water district shall proceed to exercise the powers herein granted to establish, maintain, construct and operate any sewer system

without first obtaining written approval and certification of necessity so to do from the department of ecology and department of social and health services. Any comprehensive plan for a system of sewers or addition thereto or betterment thereof shall be approved by the same county and state officials as are required to approve such plans adopted by a sewer district.

A water district shall have the power to issue general obligation bonds for sewer system purposes: PROVIDED, That a proposition to authorize general obligation bonds payable from excess tax levies for sewer system purposes pursuant to chapter 56.16 RCW shall be submitted to all of the qualified voters within that part of the water district which is not contained within another existing district duly authorized to exercise sewer district powers, and the taxes to pay the principal of and interest on the bonds approved by such voters shall be levied only upon all of the taxable property within such part of the water district.

Sec. 12. Section 4, chapter 146, Laws of 1971 ex. sess. and RCW 57.40.130 are each amended to read as follows:

If at such election a majority of the voters in the sewer district or all or either of the sewer districts involved, shall vote in favor of the merger, the county election canvassing board shall so declare in its canvass, and the return of the election shall be made within ten days after the date of such election. Upon completion of the return the merger shall be effective as to the water district and each sewer district in which the majority of voters voted in favor of the merger, and each such sewer district shall cease to exist as a separate entity and the area within such sewer district shall become a part of the water district. The sewer commissioners of any sewer district so merged shall cease to hold office, and the affairs of the merged districts shall be managed and conducted by the board of water commissioners of the water district, the members of which shall thereafter be elected in the manner provided by RCW 57.12.020.

Sec. 13. Section 6, chapter 146, Laws of 1971 ex. sess. and RCW 57.40.150 are each amended to read as follows:

Following merger, the water district and the board of commissioners thereof shall have all powers granted water districts by RCW 57.08.045 and 57.08.065 and shall have all other powers granted water districts by Title 57 RCW in any area within its boundaries which is not part of another existing district duly authorized to exercise water district powers in such area and shall have all powers granted sewer districts by RCW 56.08.060 and 56.20.015 and shall have all other power granted sewer districts by Title 56 RCW in any area within its boundaries which is not part of another existing district duly authorized to exercise sewer district powers in such area. The water district shall have the power to issue revenue bonds to which are pledged sewer revenue, water revenue, or both sewer and water revenue, as well as the power to levy assessments against property specially benefited in ((~~the manner levied by~~)) local improvement districts or utility local improvement districts, for improvements to the sewer system or the water system or both.

NEW SECTION. Sec. 14. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 15. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately.

Passed the House March 17, 1981.

Speaker of the House.

Passed the Senate April 13, 1981.

President of the Senate.

SUBSTITUTE HOUSE BILL NO. 352

State of Washington
47th Legislature
1981 Regular Session

by Committee on Local Government (originally sponsored by Committee on Local Government and Representative Isaacson

Read first time February 25, 1981, and passed to second reading.

AN ACT Relating to special purpose districts; amending section 9, chapter 189, Laws of 1967 as last amended by section 12, chapter 5, Laws of 1979 ex. sess. and RCW 36.93.090; amending section 5, chapter 210, Laws of 1941 and RCW 56.04.070; amending section 48, chapter 210, Laws of 1941 as last amended by section 3, chapter 103, Laws of 1959 and RCW 56.08.060; amending section 4, chapter 58, Laws of 1974 ex. sess. as last amended by section 1, chapter 12, Laws of 1980 and RCW 56.20.015; amending section 4, chapter 148, Laws of 1969 ex. sess. and RCW 56.36.040; amending section 6, chapter 148, Laws of 1969 ex. sess. and RCW 56.36.060; amending section 4, chapter 114, Laws of 1929 and RCW 57.04.070; amending section 3, chapter 251, Laws of 1953 as amended by section 4, chapter 108, Laws of 1959 and RCW 57.08.045; amending section 1, chapter 111, Laws of 1963 as last amended by section 69, chapter 141, Laws of 1979 and RCW 57.08.065; amending section 4, chapter 146, Laws of 1971 ex. sess. and RCW 57.40.130; amending section 6, chapter 146, Laws of 1971 ex. sess. and RCW 57.40.150; adding a new section to chapter 56.36 RCW; creating a new section; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. Section 1. It is declared to be the public policy of the state of Washington to provide for the orderly growth and development of those areas of the state requiring public water service or sewer service and to secure the health and welfare of the people residing therein. The growth of urban population and the movement of people into suburban areas has

required the performance of such services by water districts and sewer districts and the development of such districts has created problems of conflicting jurisdiction and potential double taxation.

It is the purpose of this act to reduce the duplication of service and the conflict among jurisdictions by establishing the principle that the first in time is the first in right where districts overlap and by encouraging the consolidation of districts. It is also the purpose of this act to prevent the imposition of double taxation upon the same property by establishing a general classification of property which will be exempt from property taxation by a district when such property is within the jurisdiction of an established district duly authorized to provide service of like character.

Unless the context clearly requires otherwise, as used in this act, the term "district" means either a water district organized under Title 57 RCW or a sewer district organized under Title 56 RCW or a merged water and sewer district organized pursuant to chapter 57.40 or 56.36 RCW.

Sec. 2. Section 9, chapter 189, Laws of 1967 as last amended by section 12, chapter 5, Laws of 1979 ex. sess. and RCW 36.93.090 are each amended to read as follows:

Whenever any of the following described actions are proposed in a county in which a board has been established, the initiators of the action shall file a notice of intention with the board, which may review any such proposed actions pertaining to:

(1) The creation, dissolution, incorporation, disincorporation, consolidation, or change in the boundary of any city, town, or special purpose district, except that a board may not review the dissolution or disincorporation of a special purpose district which was dissolved or disincorporated pursuant to the provisions of chapter 36.96 RCW; or

(2) The assumption by any city or town of all or part of the assets, facilities, or indebtedness of a special purpose

district which lies partially within such city or town; or

(3) The establishment of or change in the boundaries of a mutual water and sewer system or separate sewer system by a water district pursuant to RCW 57.08.065 or chapter 57.40 RCW, as now or hereafter amended; or

(4) The establishment of or change in the boundaries of a mutual sewer and water system or separate water system by a sewer district pursuant to RCW 56.20.015 or chapter 56.36 RCW, as now or hereafter amended; or

(5) The extension of permanent water or sewer service outside of its existing corporate boundaries by a city, town, or special purpose district.

Sec. 3. Section 5, chapter 210, Laws of 1941 and RCW 56.04.070 are each amended to read as follows:

Whenever two or more petitions for the formation of a sewer district shall be filed as ((herein)) provided in this chapter, the petition describing the greater area shall supersede all others, and an election shall first be held thereunder, and no lesser sewer district shall ever be created within the limits in whole or in part of any other sewer district, except as provided in RCW 56.36.060, as now or hereafter amended.

Sec. 4. Section 48, chapter 210, Laws of 1941 as last amended by section 3, chapter 103, Laws of 1959 and RCW 56.08.060 are each amended to read as follows:

A sewer district may enter into contracts with any county, city, town, sewer district, water district, or any other municipal corporation, or with any private person, firm or corporation, for the acquisition, ownership, use, and operation of any property, facilities, or services, within or without the sewer district and necessary or desirable to carry out the purposes of the sewer district, and a sewer district or a water district duly authorized to exercise sewer district powers may provide sewer service to property owners ((outside)) in areas within or without the limits of the ((sewer)) district;

PROVIDED, That if any such area is located within another existing district duly authorized to exercise sewer district powers in such area, then sewer service may not be so provided by contract or otherwise without the consent by resolution of the board of commissioners of such other district.

Sec. 5. Section 4, chapter 58, Laws of 1974 ex. sess. as last amended by section 1, chapter 12, Laws of 1980 and RCW 56.20.015 are each amended to read as follows:

In addition to all of the powers and authorities set forth in Title 56 RCW, any sewer district shall have all of the powers of cities as set forth in chapter 35.44 RCW. Sewer districts may also exercise all of the powers permitted to a water district under Title 57 RCW, except that a sewer district may not exercise water district powers in any area within its boundaries which is part of an existing district which previously shall have been duly authorized to exercise water district powers in such area without the consent by resolution of the board of commissioners of such district.

A sewer district shall have the power to issue general obligation bonds for water system purposes: PROVIDED, That a proposition to authorize general obligation bonds payable from excess tax levies for water system purposes pursuant to chapters 57.16 and 57.20 RCW shall be submitted to all of the qualified voters within that part of the sewer district which is not contained within another existing district duly authorized to exercise water district powers, and the taxes to pay the principal of and interest on the bonds approved by such voters shall be levied only upon all of the taxable property within such part of the sewer district.

Sec. 6. Section 4, chapter 148, Laws of 1969 ex. sess. and RCW 56.36.040 are each amended to read as follows:

If at such election a majority of the voters in the water district or all or either of the water districts involved, shall vote in favor of the merger, the county election canvassing board shall so declare in its canvass, and the return of the

election shall be made within ten days after the date of such election. Upon completion of the return the merger shall be effective as to the sewer district and each water district in which the majority of voters voted in favor of the merger, and each such water district shall cease to exist as a separate entity and the area within such water district shall become a part of the sewer district. The water commissioners of any water district so merged shall cease to hold office, and the affairs of the merged districts shall be managed and conducted by the board of sewer commissioners of the sewer district, the members of which shall thereafter be elected in the manner provided in RCW 56.12.030.

Sec. 7. Section 6, chapter 148, Laws of 1969 ex. sess. and RCW 56.36.060 are each amended to read as follows:

Following merger, the sewer district and the board of commissioners thereof shall have all powers granted sewer districts by RCW 56.08.060 and 56.20.015 and shall have all other powers granted sewer districts by Title 56 RCW in any area within its boundaries which is not part of another existing district duly authorized to exercise sewer district powers in such area and shall have all powers granted water districts by RCW 57.08.045 and 57.08.065 and shall have all other powers granted water districts by Title 57 RCW in any area within its boundaries which is not part of another existing district duly authorized to exercise water district powers in such area. The sewer district shall have the power to issue revenue bonds to which are pledged water revenue, sewer revenue, or both water and sewer revenue, as well as the power to levy assessments against property specially benefited in ((the manner levied by)) local improvement districts or utility local improvement districts, for improvements to the water system or the sewer system or both.

NEW SECTION. Sec. 8. There is added to chapter 56.36 RCW a new section to read as follows:

Each and all of the respective areas of land organized as

a water district and heretofore attempted to be merged into a sewer district under chapter 148 of the Laws of 1969, and amendments thereto, and which have maintained their organization as part of a sewer district since the date of such attempted merger, are hereby validated and declared to be a proper merger of a water district into a sewer district. Such district shall have the respective boundaries set forth in their merger proceedings as shown by the official files of the legislative authority of the county in which such merged district is located. All debts, contracts, bonds, and other obligations heretofore executed in connection with or in pursuance of such attempted organization, and any and all assessments or levies and all other actions taken by such districts or by their respective officers acting under such attempted organization, are hereby declared legal and valid and of full force and effect. Such districts may hereafter exercise their powers only to the extent permitted by and in accordance with the provisions of RCW 56.36.060, as now or hereafter amended.

Sec. 9. Section 4, chapter 114, Laws of 1929 and RCW 57.04.070 are each amended to read as follows:

Whenever two or more petitions for the formation of a water district shall be filed as ((herein)) provided in this chapter, the petition describing the greater area shall supersede all others and an election shall first be held thereunder, and no lesser water district shall ever be created within the limits in whole or in part of any water district, except as provided in RCW 57.40.150, as now or hereafter amended.

Sec. 10. Section 3, chapter 251, Laws of 1953 as amended by section 4, chapter 108, Laws of 1959 and RCW 57.08.045 are each amended to read as follows:

A water district may enter into contracts with any county, city, town, sewer district, water district, or any other municipal corporation, or with any private person or corporation, for the acquisition, ownership, use and operation

of any property, facilities, or services, within or without the water district and necessary or desirable to carry out the purposes of the water district, and a water district or sewer district duly authorized to exercise water district powers may provide water services to property owners ((outside)) in areas within or without the limits of the ((water)) district: PROVIDED, That if such area is located within another existing district duly authorized to exercise water district powers in such area, then water service may not be so provided by contract or otherwise without the consent by resolution of the board of commissioners of such other district.

Sec. 11. Section 1, chapter 111, Laws of 1963 as last amended by section 69, chapter 141, Laws of 1979 and RCW 57.08.065 are each amended to read as follows:

In addition to the powers now given water districts by law, they shall also have power to establish, maintain and operate a mutual water and sewer system or a separate sewer system within their water district area in the same manner as provided by law for the doing thereof in connection with water supply systems.

In addition thereto, a water district constructing, maintaining and operating a sanitary sewer system may exercise all the powers permitted to a sewer district under Title 56 RCW, including, but not limited to, the right to compel connections to the district's system, liens for delinquent sewer connection charges or sewer service charges, and all other powers presently exercised by or which may be hereafter granted to such sewer districts: PROVIDED, That a water district may not exercise sewer district powers in any area within its boundaries which is part of an existing district which previously shall have been duly authorized to exercise sewer district powers in such area without the consent by resolution of the board of commissioners of such other district: PROVIDED FURTHER, That no water district shall proceed to exercise the powers herein granted to establish, maintain, construct and operate any sewer system

without first obtaining written approval and certification of necessity so to do from the department of ecology and department of social and health services. Any comprehensive plan for a system of sewers or addition thereto or betterment thereof shall be approved by the same county and state officials as are required to approve such plans adopted by a sewer district.

A water district shall have the power to issue general obligation bonds for sewer system purposes: PROVIDED, That a proposition to authorize general obligation bonds payable from excess tax levies for sewer system purposes pursuant to chapter 56.16 RCW shall be submitted to all of the qualified voters within that part of the water district which is not contained within another existing district duly authorized to exercise sewer district powers, and the taxes to pay the principal of and interest on the bonds approved by such voters shall be levied only upon all of the taxable property within such part of the water district.

Sec. 12. Section 4, chapter 146, Laws of 1971 ex. sess. and RCW 57.40.130 are each amended to read as follows:

If at such election a majority of the voters in the sewer district or all or either of the sewer districts involved, shall vote in favor of the merger, the county election canvassing board shall so declare in its canvass, and the return of the election shall be made within ten days after the date of such election. Upon completion of the return the merger shall be effective as to the water district and each sewer district in which the majority of voters voted in favor of the merger, and each such sewer district shall cease to exist as a separate entity and the area within such sewer district shall become a part of the water district. The sewer commissioners of any sewer district so merged shall cease to hold office, and the affairs of the merged districts shall be managed and conducted by the board of water commissioners of the water district, the members of which shall thereafter be elected in the manner provided by RCW 57.12.020.

Sec. 13. Section 6, chapter 146, Laws of 1971 ex. sess. and RCW 57.40.150 are each amended to read as follows:

Following merger, the water district and the board of commissioners thereof shall have all powers granted water districts by RCW 57.08.045 and 57.08.065 and shall have all other powers granted water districts by Title 57 RCW in any area within its boundaries which is not part of another existing district duly authorized to exercise water district powers in such area and shall have all powers granted sewer districts by RCW 56.08.060 and 56.20.015 and shall have all other power granted sewer districts by Title 56 RCW in any area within its boundaries which is not part of another existing district duly authorized to exercise sewer district powers in such area. The water district shall have the power to issue revenue bonds to which are pledged sewer revenue, water revenue, or both sewer and water revenue, as well as the power to levy assessments against property specially benefited in ((the-manner-levied-by)) local improvement districts or utility local improvement districts, for improvements to the sewer system or the water system or both.

NEW SECTION. Sec. 14. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 15. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately.

HOUSE OF REPRESENTATIVES
STATE OF WASHINGTON

BILL REPORT

(as passed by committee)

1981 REGULAR session

Bill No.: HB 352

Companion Measure: SB 3534
Original:
Amended:
Substitute: X

Date: 2-23-81
Staff: Steve Lundin
Phone: 3-4808

BRIEF TITLE: (from Status of Bills)
Sewer/water districts revis.

SPONSOR(S): (noteif agency; committee; executive request)
Committee on Local Government and (OVER)

Reported by Committee on:	Recommendation:	Roll Call Vote:		FISCAL NOTE INFORMATION			
				Prepared:	Attached:	Requested:	
Local Government (18)	Sub DP (12)	12 Y	0 N				n/a

Majority Report signed by:
ISAACSON, LUNDQUIST, Barr, Barrett, Berleen, Burns, Chamberlain, Garrett, Hine, James, North, Stratton

Minority Report signed by: (if requested)

ANALYSIS: (background / summary / effect of amendments or substitute, as applicable)

BACKGROUND: A recent merger of a water district into a sewer district north of Seattle resulted in a situation where common territory was included within the boundaries of both the merging sewer district and a second sewer district. Questions arose as to who provides what utility service where and the ability of these districts to issue general obligation bonds and retire them with voter approved bond retirement tax levies. Failure of the boundary review board to provide adequate notice of such proposed merger to the second sewer district resulted in litigation questioning the merger.

SUMMARY: (1) Validates the attempted merger of a water district into a sewer district where the merged district has acted as a merged district. (2) Provides that when two or more water districts, sewer districts, or merged sewer and water districts occupy common territory the first district to provide a particular utility service in the area has the exclusive right to provide such service. (3) Allows propositions authorizing multi-year general obligation bond retirement levies to be placed before voters residing in less than an entire water district or less than an entire sewer district and the property taxes levied to retire the bonds are levied less than district-wide.

EFFECT OF SUBSTITUTE: Technical changes. In addition, language in the intent section further clarifies the intent of the legislation.

☐ continued on reverse

Arguments presented for: (1) The sewer district questioning the validity of the merger will drop its lawsuit if the legislation is passed. (2) Straightens out an emerging problem where overlapping districts currently possess common powers to provide the same utility service. (3) Avoids the situation where double taxation ☒ continued on reverse

Arguments presented against:
None presented
☐ continued on reverse

Principal proponents: Mike Gusa, Wn. State Assn. of Water Districts; James Ellis, N.E. Lake Washington Sewer Dist.; Chip Davidson, N.E. Lake Washington Sewer Dist.

Principal opponents:
None

Attachments: Committee Roll Call Vote Sheet

Rep C -106-

SPONSORS (Cont.)
Representative Isaacson

ARGUMENTS PRESENTED FOR (Cont.)
to retire general obligation bonds could result on commonly held territory to fund utility improvements that are of no benefit to the residents of such area.

HOUSE OF REPRESENTATIVES

Receipt for Bills

Olympia, 12-23-81

RECEIVED OF Local Gov't Committee

H. B. No. 352 and

S. B. No. and

No. and

By

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

BILL NO. HB 352

DATE: 2-23-81

Committee on Local Government

VOTING ON:

Final Passage DPS
(DP, DPA, DPS, DP2S)

MEMBER	AYE	NAY	ABSENT = A EXCUSED = E	NOT VOTING	CHANGE VOTE
Scott Barr	X				
Richard Barrett	X				
Jeanette Berleen	X				
Wendell Brown			AE		
Bill Burns	X				
Robert Chamberlain	X				
Phyllis Erickson			A		
Avery Garrett	X				
Lorraine Hine	X				
Ray Isaacson	X				
Harry James	X				
Jay Lane			A		
Margaret Leonard			AE		
Homer Lundquist	X				
Carol Monohon			A		
Frances North	X				
Lois Stratton	X				
Roger Van Dyken			A		
TOTAL	12	0	6		
Change Vote					
TOTAL					

Report of Standing Committee

HOUSE OF REPRESENTATIVES
Olympia, Washington

2-3-81
(date)

House Bill No. 352
(Type in House or Senate Bill, Resolution, or Memorial)

Prime Sponsor Committee on Local Government

Revising laws relating to sewer and water districts
(Type in brief title exactly as it appears on back cover of original bill)

reported by Committee on Local Government (18)

☐ *MAJORITY recommendation: Do Pass.*

☒ *MAJORITY recommendation: The substitute bill be substituted therefor and the substitute bill do pass.*

☐ *MAJORITY recommendation: Do pass with the following amendment(s):*

Signed by
Representatives (12)

Isaacson — *Chairman*

Lundquist — *Vice Chairman*

[redacted] — Ranking Minority Member

Barr

Barrett

Berleen

[redacted]

Burns

Chamberlain

Garrett

Hine

James

[redacted]

[redacted]

[redacted]

North

Stratton

[redacted]

ATTACHMENT: Committee Roll Call Vote

☐ Check here if Minority Report Requested (see back)

A-085

Rep D 106-

Report of Standing Committee

HOUSE OF REPRESENTATIVES
Olympia, Washington

_____ (date)

_____ *No.* _____
(Type in House or Senate Bill, Resolution, or Memorial)

Prime Sponsor _____

_____
(Type in brief title exactly as it appears on back cover of original bill)

_____

reported by Committee on Local Government (18)

MINORITY recommendation:

Signed by
Representatives

Isaacson	*Chairman*	Garrett	
Lundquist	*Vice Chairman*	Hine	
Erickson	Ranking Minority Member	James	
Barr		Lane	
Barrett		Leonard	
Berleen		Monohon	
Brown		North	
Burns		Stratton	
Chamberlain		Van Dyken	

HOUSE OF REPRESENTATIVES

Olympia, Washington

BILL ANALYSIS

BILL NO. HB 352

Comp. Meas. SB 3534

Sewer/water districts revis.
Brief Title

Status H Local Government

Date February 17, 1981

Committee on Local Government
Sponsor

Steve Lundin
Staff Contact: 3-4808

Committee on Local Govt.

HOUSE BILL NO. 352 By Committee on Local Government and Representative Isaacson

This bill was drafted as a result of the attempted merger of a water district into a sewer district where, prior to the merger, the water district contained territory within its boundaries which entirely encompassed the sewer district that it attempted to merge into as well as a portion of a second sewer district. The result was a portion of common territory lying within two sewer districts. Issues surfaced concerning who provides what service where and which property is subject to potential property tax levies used to retire general obligation bonds funding sewer services. To further complicate matters, current law authorizes sewer districts to provide water services and water districts to provide sewer services. HB 352 essentially:

(1) Validates the attempted merger described above;

(2) Provides for a determination of which district provides water and sewer service in that territory commonly occuped by two or more water districts and/or sewer districts;

(3) Allows propositions authorizing multi-year general obligation bond retirement levies to be placed before voters residing in less than an entire water district or less than an entire sewer district and the property taxes levied to retire the bonds are levied less than district-wide.

Validates any past attempts of water districts to merge into sewer districts where, after the attempted merger, the sewer district maintained its organization as a sewer district that had a water district merged into it (see sec. 8).

Adds the following actions which may be subjected to review and approval, or conditional approval, or rejection by a boundary review board: (1) the establishment or change in boundaries of a sewer system resulting from a merger of a sewer district into a water district; and (2) the establishment or change in boundaries of a mutual sewer and water system, or a separate water system, resulting from either the authority of a sewer district to provide water services, or from a merger of a water district into a sewer district (see sec. 2).

Clarifies that when a water district merges into a sewer district, the water district ceases to exist as a separate entity and the entire area within the boundaries of the water district becomes part of the sewer district (see sec. 6). Clarifies that where a sewer district merges into a water district, the

sewer district ceases to exist as a separate entity and the entire area within the boundaries of the sewer district becomes part of the water district (see sec. 12).

Clarifies which district provides water service in which areas, or which district provides sewer service in which areas, when two water districts, or two sewer districts, or a water district and sewer district, occupy common territory.

(1) Provides that, without the consent of the other district, a sewer district may not exercise water district powers in an area within its boundaries where another sewer district or a water district is authorized to exercise water district powers (see sec. 5);

(2) Provides that, without the consent of the other district, a water district may not exercise sewer district powers in an area within its boundaries where another water district or a sewer district is exercising sewer district powers (see sec. 11);

(3) Provides that in a sewer district which has had a water district merge into it, the resulting sewer district: (a) may provide sewer facilities within those portions of its new boundaries which are not part of another sewer district or a water district that is authorized to provide sewer district powers in such area; and (b) may provide water services within those portions of its new boundaries which are not part of another sewer district or a water district that is authorized to provide water district powers in such area (see sec. 7); and

(4) Provides that in a water district which has had a sewer district merge into it, the resulting water district: (a) may provide water facilities within those portions of its new boundaries which are not part of another water district or sewer district that is authorized to provide water district powers in such area; and (b) may provide sewer services within those portions of its new boundaries which is not part of another water district or a sewer district that is authorized to provide sewer district powers in such area (see sec. 13).

Limits those areas within a sewer district or water district where general obligation bond retirement levy propositions are submitted to the residents thereof, and if approved, which are subject to such tax levies:

(1) Provides that in a sewer district a proposition to levy general obligation bonds to fund water systems may only be submitted to all of the qualified voters residing within that portion of the sewer district which is not contained in another sewer district or a water district authorized to exercise water district powers (see sec. 5);

(2) Provides that in a sewer district which has had a water district merged into it, the proposition to authorize general obligation bonds for: (a) water systems may only be submitted to the qualified voters residing within that portion of the sewer district not contained in another sewer district or a water district authorized to exercise water district powers; and (b) sewer

systems may only be submitted to the qualified voters residing within that portion of the sewer district not contained in another sewer district or a water district authorized to exercise sewer district powers (see sec. 7);

(3) Provides that in a water district a proposition to levy general obligation bonds to fund sewer systems may only be submitted to all of the qualified voters residing within that portion of the water district which is not contained in another water district or a sewer district authorized to exercise sewer district powers (see sec. 11); and

(4) Provides that in a water district which has had a sewer district merge into it, the proposition to authorize general obligation bonds for: (a) sewer systems may only be submitted to the qualified voters residing within that portion of the water district not contained in another water district or a sewer district authorized to exercise sewer district powers; and (b) water systems may only be submitted to the qualified voters residing within that portion of the water district not contained in another water district or a sewer district authorized to exercise water district powers (see sec. 13).

Contains a severability clause (see sec. 14) and emergency clause (see sec. 15).

1st Sub. H. B. 352 By House Committee on Local Government

Revising laws relating to sewer and water districts.

(DIGEST OF PROPOSED 1ST SUBSTITUTE)

Requires filing of a notice of intention with the boundary review board of proposed actions to establish or change the boundaries of a mutual sewer and water system or separate water system by a sewer district.

Permits a duly authorized water district to provide sewer service to property owners in areas within or without the district limits. Requires prior consent for such water district to offer services in an existing district within its area authorized to provide sewer service.

Requires prior consent for a sewer district to exercise water district powers in an area within its boundaries which is part of a district duly authorized to exercise such powers.

Authorizes a sewer district to issue general obligation bonds for water system purposes. Requires voter approval of bonds payable from excess tax levies for water system purposes. Limits tax levy to pay principal and interest to taxable property within the area which has authorized the indebtedness. Grants corresponding authority to water districts.

Clarifies provision for merger of sewer and water districts. Specifies the powers of a sewer and water district and their respective boards following merger. Prescribes issuance of general obligation bonds by either board.

Validates past attempts of a water district to merge into a sewer district under a 1969 law if the water district has maintained its organization as part of the sewer district since the attempted merger.

Declares an emergency and takes effect immediately.

--1981 REGULAR SESSION--

Feb 25 Majority; 1st substitute bill be substituted, do pass.
Passed to Rules committee for second reading.

H. B. 352 By Representative Isaacson (By House Committee on Local Government Request)

Revising laws relating to sewer and water districts.

Requires filing of a notice of intention with the boundary review board of proposed actions to establish or change the boundaries of a mutual sewer and water system or separate water system by a sewer district.

Permits a duly authorized water district to provide sewer service to property owners in areas within or without the district limits. Requires prior consent for such water district to offer services in an existing district within its area authorized to provide sewer service.

Requires prior consent for a sewer district to exercise water district powers in an area within its boundaries which is part of a district duly authorized to exercise such powers.

Authorizes a sewer district to issue general obligation bonds for water system purposes upon voter approval. Limits tax levy to pay principal and interest to taxable property within the area which has authorized the

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indebtedness.

Clarifies provision for merger of sewer and water districts. Specifies the powers of a sewer and water district and their respective boards following merger. Prescribes issuance of general obligation bonds by either board.

Validates past attempts of a water district to merge into a sewer district under a 1969 law if the water district has maintained its organization as part of the sewer district since the attempted merger.

Declares an emergency and takes effect immediately.

--1981 REGULAR SESSION--

Feb 11 Developed in HPM 294.
First reading, referred to Local Government.

APPENDIX C

SUBSTITUTE HOUSE BILL NO. 352

State of Washington
47th Legislature
1981 Regular Session

by Committee on Local Government (originally sponsored by Committee on Local Government and Representative Isaacson

Read first time February 25, 1981, and passed to second reading.

AN ACT Relating to special purpose districts; amending section 9, chapter 189, Laws of 1967 as last amended by section 12, chapter 5, Laws of 1979 ex. sess. and RCW 36.93.090; amending section 5, chapter 210, Laws of 1941 and RCW 56.04.070; amending section 48, chapter 210, Laws of 1941 as last amended by section 3, chapter 103, Laws of 1959 and RCW 56.08.060; amending section 4, chapter 58, Laws of 1974 ex. sess. as last amended by section 1, chapter 12, Laws of 1980 and RCW 56.20.015; amending section 4, chapter 148, Laws of 1969 ex. sess. and RCW 56.36.040; amending section 6, chapter 148, Laws of 1969 ex. sess. and RCW 56.36.060; amending section 4, chapter 114, Laws of 1929 and RCW 57.04.070; amending section 3, chapter 251, Laws of 1953 as amended by section 4, chapter 108, Laws of 1959 and RCW 57.08.045; amending section 1, chapter 111, Laws of 1963 as last amended by section 69, chapter 141, Laws of 1979 and RCW 57.08.065; amending section 4, chapter 146, Laws of 1971 ex. sess. and RCW 57.40.130; amending section 6, chapter 146, Laws of 1971 ex. sess. and RCW 57.40.150; adding a new section to chapter 56.36 RCW; creating a new section; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. Section 1. It is declared to be the public policy of the state of Washington to provide for the orderly growth and development of those areas of the state requiring public water service or sewer service and to secure the health and welfare of the people residing therein. The growth of urban population and the movement of people into suburban areas has

required the performance of such services by water districts and sewer districts and the development of such districts has created problems of conflicting jurisdiction and potential double taxation.

It is the purpose of this act to reduce the duplication of service and the conflict among jurisdictions by establishing the principle that the first in time is the first in right where districts overlap and by encouraging the consolidation of districts. It is also the purpose of this act to prevent the imposition of double taxation upon the same property by establishing a general classification of property which will be exempt from property taxation by a district when such property is within the jurisdiction of an established district duly authorized to provide service of like character.

Unless the context clearly requires otherwise, as used in this act, the term "district" means either a water district organized under Title 57 RCW or a sewer district organized under Title 56 RCW or a merged water and sewer district organized pursuant to chapter 57.40 or 56.36 RCW.

Sec. 2. Section 9, chapter 189, Laws of 1967 as last amended by section 12, chapter 5, Laws of 1979 ex. sess. and RCW 36.93.090 are each amended to read as follows:

Whenever any of the following described actions are proposed in a county in which a board has been established, the initiators of the action shall file a notice of intention with the board, which may review any such proposed actions pertaining to:

(1) The creation, dissolution, incorporation, disincorporation, consolidation, or change in the boundary of any city, town, or special purpose district, except that a board may not review the dissolution or disincorporation of a special purpose district which was dissolved or disincorporated pursuant to the provisions of chapter 36.96 RCW; or

(2) The assumption by any city or town of all or part of the assets, facilities, or indebtedness of a special purpose

district which lies partially within such city or town; or

(3) The establishment of or change in the boundaries of a mutual water and sewer system or separate sewer system by a water district pursuant to RCW 57.08.065 or chapter 57.40 RCW, as now or hereafter amended; or

(4) The establishment of or change in the boundaries of a mutual sewer and water system or separate water system by a sewer district pursuant to RCW 56.20.015 or chapter 56.36 RCW, as now or hereafter amended; or

(5) The extension of permanent water or sewer service outside of its existing corporate boundaries by a city, town, or special purpose district.

Sec. 3. Section 5, chapter 210, Laws of 1941 and RCW 56.04.070 are each amended to read as follows:

Whenever two or more petitions for the formation of a sewer district shall be filed as ((herein)) provided in this chapter, the petition describing the greater area shall supersede all others, and an election shall first be held thereunder, and no lesser sewer district shall ever be created within the limits in whole or in part of any other sewer district, except as provided in RCW 56.36.060, as now or hereafter amended.

Sec. 4. Section 48, chapter 210, Laws of 1941 as last amended by section 3, chapter 103, Laws of 1959 and RCW 56.08.060 are each amended to read as follows:

A sewer district may enter into contracts with any county, city, town, sewer district, water district, or any other municipal corporation, or with any private person, firm or corporation, for the acquisition, ownership, use, and operation of any property, facilities, or services, within or without the sewer district and necessary or desirable to carry out the purposes of the sewer district, and a sewer district or a water district duly authorized to exercise sewer district powers may provide sewer service to property owners ((outside)) in areas within or without the limits of the ((sewer)) district;

PROVIDED, That if any such area is located within another existing district duly authorized to exercise sewer district powers in such area, then sewer service may not be so provided by contract or otherwise without the consent by resolution of the board of commissioners of such other district.

Sec. 5. Section 4, chapter 58, Laws of 1974 ex. sess. as last amended by section 1, chapter 12, Laws of 1980 and RCW 56.20.015 are each amended to read as follows:

In addition to all of the powers and authorities set forth in Title 56 RCW, any sewer district shall have all of the powers of cities as set forth in chapter 35.44 RCW. Sewer districts may also exercise all of the powers permitted to a water district under Title 57 RCW, except that a sewer district may not exercise water district powers in any area within its boundaries which is part of an existing district which previously shall have been duly authorized to exercise water district powers in such area without the consent by resolution of the board of commissioners of such district.

A sewer district shall have the power to issue general obligation bonds for water system purposes: PROVIDED, That a proposition to authorize general obligation bonds payable from excess tax levies for water system purposes pursuant to chapters 57.16 and 57.20 RCW shall be submitted to all of the qualified voters within that part of the sewer district which is not contained within another existing district duly authorized to exercise water district powers, and the taxes to pay the principal of and interest on the bonds approved by such voters shall be levied only upon all of the taxable property within such part of the sewer district.

Sec. 6. Section 4, chapter 148, Laws of 1969 ex. sess. and RCW 56.36.040 are each amended to read as follows:

If at such election a majority of the voters in the water district or all or either of the water districts involved, shall vote in favor of the merger, the county election canvassing board shall so declare in its canvass, and the return of the

election shall be made within ten days after the date of such election. Upon completion of the return the merger shall be effective as to the sewer district and each water district in which the majority of voters voted in favor of the merger, and each such water district shall cease to exist as a separate entity and the area within such water district shall become a part of the sewer district. The water commissioners of any water district so merged shall cease to hold office, and the affairs of the merged districts shall be managed and conducted by the board of sewer commissioners of the sewer district, the members of which shall thereafter be elected in the manner provided in RCW 56.12.030.

Sec. 7. Section 6, chapter 148, Laws of 1969 ex. sess. and RCW 56.36.060 are each amended to read as follows:

Following merger, the sewer district and the board of commissioners thereof shall have all powers granted sewer districts by RCW 56.08.060 and 56.20.015 and shall have all other powers granted sewer districts by Title 56 RCW in any area within its boundaries which is not part of another existing district duly authorized to exercise sewer district powers in such area and shall have all powers granted water districts by RCW 57.08.045 and 57.08.065 and shall have all other powers granted water districts by Title 57 RCW in any area within its boundaries which is not part of another existing district duly authorized to exercise water district powers in such area. The sewer district shall have the power to issue revenue bonds to which are pledged water revenue, sewer revenue, or both water and sewer revenue, as well as the power to levy assessments against property specially benefited in ~~((the-manner-levied-by))~~ local improvement districts or utility local improvement districts, for improvements to the water system or the sewer system or both.

NEW SECTION. Sec. 8. There is added to chapter 56.36 RCW a new section to read as follows:

Each and all of the respective areas of land organized as

a water district and heretofore attempted to be merged into a sewer district under chapter 148 of the Laws of 1969, and amendments thereto, and which have maintained their organization as part of a sewer district since the date of such attempted merger, are hereby validated and declared to be a proper merger of a water district into a sewer district. Such district shall have the respective boundaries set forth in their merger proceedings as shown by the official files of the legislative authority of the county in which such merged district is located. All debts, contracts, bonds, and other obligations heretofore executed in connection with or in pursuance of such attempted organization, and any and all assessments or levies and all other actions taken by such districts or by their respective officers acting under such attempted organization, are hereby declared legal and valid and of full force and effect. Such districts may hereafter exercise their powers only to the extent permitted by and in accordance with the provisions of RCW 56.36.060, as now or hereafter amended.

Sec. 9. Section 4, chapter 114, Laws of 1929 and RCW 57.04.070 are each amended to read as follows:

Whenever two or more petitions for the formation of a water district shall be filed as ((herein)) provided in this chapter, the petition describing the greater area shall supersede all others and an election shall first be held thereunder, and no lesser water district shall ever be created within the limits in whole or in part of any water district, except as provided in RCW 57.40.150, as now or hereafter amended.

Sec. 10. Section 3, chapter 251, Laws of 1953 as amended by section 4, chapter 108, Laws of 1959 and RCW 57.08.045 are each amended to read as follows:

A water district may enter into contracts with any county, city, town, sewer district, water district, or any other municipal corporation, or with any private person or corporation, for the acquisition, ownership, use and operation

of any property, facilities, or services, within or without the water district and necessary or desirable to carry out the purposes of the water district, and a water district or sewer district duly authorized to exercise water district powers may provide water services to property owners ((outside)) in areas within or without the limits of the ((water)) district: PROVIDED, That if such area is located within another existing district duly authorized to exercise water district powers in such area, then water service may not be so provided by contract or otherwise without the consent by resolution of the board of commissioners of such other district.

Sec. 11. Section 1, chapter 111, Laws of 1963 as last amended by section 69, chapter 141, Laws of 1979 and RCW 57.08.065 are each amended to read as follows:

In addition to the powers now given water districts by law, they shall also have power to establish, maintain and operate a mutual water and sewer system or a separate sewer system within their water district area in the same manner as provided by law for the doing thereof in connection with water supply systems.

In addition thereto, a water district constructing, maintaining and operating a sanitary sewer system may exercise all the powers permitted to a sewer district under Title 56 RCW, including, but not limited to, the right to compel connections to the district's system, liens for delinquent sewer connection charges or sewer service charges, and all other powers presently exercised by or which may be hereafter granted to such sewer districts: PROVIDED, That a water district may not exercise sewer district powers in any area within its boundaries which is part of an existing district which previously shall have been duly authorized to exercise sewer district powers in such area without the consent by resolution of the board of commissioners of such other district: PROVIDED FURTHER, That no water district shall proceed to exercise the powers herein granted to establish, maintain, construct and operate any sewer system

without first obtaining written approval and certification of necessity so to do from the department of ecology and department of social and health services. Any comprehensive plan for a system of sewers or addition thereto or betterment thereof shall be approved by the same county and state officials as are required to approve such plans adopted by a sewer district.

A water district shall have the power to issue general obligation bonds for sewer system purposes: PROVIDED, That a proposition to authorize general obligation bonds payable from excess tax levies for sewer system purposes pursuant to chapter 56.16 RCW shall be submitted to all of the qualified voters within that part of the water district which is not contained within another existing district duly authorized to exercise sewer district powers, and the taxes to pay the principal of and interest on the bonds approved by such voters shall be levied only upon all of the taxable property within such part of the water district.

Sec. 12. Section 4, chapter 146, Laws of 1971 ex. sess. and RCW 57.40.130 are each amended to read as follows:

If at such election a majority of the voters in the sewer district or all or either of the sewer districts involved, shall vote in favor of the merger, the county election canvassing board shall so declare in its canvass, and the return of the election shall be made within ten days after the date of such election. Upon completion of the return the merger shall be effective as to the water district and each sewer district in which the majority of voters voted in favor of the merger, and each such sewer district shall cease to exist as a separate entity and the area within such sewer district shall become a part of the water district. The sewer commissioners of any sewer district so merged shall cease to hold office, and the affairs of the merged districts shall be managed and conducted by the board of water commissioners of the water district, the members of which shall thereafter be elected in the manner provided by RCW 57.12.020.

Sec. 13. Section 6, chapter 146, Laws of 1971 ex. sess. and RCW 57.40.150 are each amended to read as follows:

Following merger, the water district and the board of commissioners thereof shall have all powers granted water districts by RCW 57.08.045 and 57.08.065 and shall have all other powers granted water districts by Title 57 RCW in any area within its boundaries which is not part of another existing district duly authorized to exercise water district powers in such area and shall have all powers granted sewer districts by RCW 56.08.060 and 56.20.015 and shall have all other power granted sewer districts by Title 56 RCW in any area within its boundaries which is not part of another existing district duly authorized to exercise sewer district powers in such area. The water district shall have the power to issue revenue bonds to which are pledged sewer revenue, water revenue, or both sewer and water revenue, as well as the power to levy assessments against property specially benefited in ((the-manner-levied-by)) local improvement districts or utility local improvement districts, for improvements to the sewer system or the water system or both.

NEW SECTION. Sec. 14. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 15. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately.

SHB 352

BRIEF TITLE: Revising laws relating to sewer and water districts.

SPONSORS: House Committee on Local Government
(Originally Sponsored By House Committee on Local Government and Representative Isaacson)

HOUSE COMMITTEE: Local Government

SENATE COMMITTEE: Local Government

Staff: Victor Moon (753-5391); Steve Hemmen (754-2106)
Committee Hearing Dates (Session): April 7, 1981

Majority Report (DP) signed by: Senators Zimmerman, Bauer, Charnley, Fuller, Gould, Lee, McCaslin, Talley and Wilson

SYNOPSIS AS OF APRIL 8, 1981

BACKGROUND:

A recent merger of a water district into a sewer district north of Seattle resulted in a situation where common territory was included within the boundaries of both the merged sewer district and a second sewer district. Questions arose as to who provides what utility service where and the ability of these districts to issue general obligation bonds and retire them with voter approved bond retirement tax levies. Failure of the boundary review board to provide adequate notice of such proposed merger to the second sewer district resulted in litigation questioning the merger.

SUMMARY:

The attempted merger of a water district into a sewer district is validated where the merged district has acted as a merged district. When two or more water districts, sewer districts, or merged sewer and water districts occupy common territory, the first district to provide a particular service in the area has the exclusive right to provide such service. Propositions authorizing multi-year general obligation bond retirement levies are authorized to be placed before voters residing in less than an entire water district or less than an entire sewer district and the property taxes levied to retire the bonds are levied less than district-wide when two or more of these districts occupy common territory.

Appropriation: none
Revenue: none
Fiscal Note: none requested

ADDITIONAL WRITTEN INFORMATION: Not available

ARGUMENTS AND TESTIMONY
AT SENATE COMMITTEE HEARING(S)

Arguments For: The bill is identical to SB 3534 and designed to solve a number of problems with sewer and water district mergers in King County.

Arguments Against: none

Testified For: Representative Isaacson; Mike Gusa, Washington State Association of Water Districts; Chip Davidson, N.E. Lake Washington Sewer District

Testified Against: no one

SHB 352

BRIEF TITLE: Revising laws relating to sewer and water districts.

SPONSORS: House Committee on Local Government
(Originally Sponsored By Representative Isaacson)

HOUSE COMMITTEE: Local Government

SENATE COMMITTEE: Local Government

Staff:

SYNOPSIS AS OF MARCH 31, 1981

BACKGROUND:

A recent merger of a water district into a sewer district north of Seattle resulted in a situation where common territory was included within the boundaries of both the merging sewer district and a second sewer district. Questions arose as to who provides what utility service where and the ability of these districts to issue general obligation bonds and retire them with voter approved bond retirement tax levies. Failure of the boundary review board to provide adequate notice of such proposed merger to the second sewer district resulted in litigation questioning the merger.

SUMMARY:

The bill validates the attempted merger of a water district into a sewer district where the merged district has acted as a merged district. The bill provides that when two or more water districts, sewer districts, or merged sewer and water districts occupy common territory, the first district to provide a particular service in the area has the exclusive right to provide such service. The bill allows propositions authorizing multi-year general obligation bond retirement levies to be placed before voters residing in less than an entire water district or less than an entire sewer district and the property taxes levied to retire the bonds are levied less than district-wide when two or more of these districts occupy common territory.

Appropriation: none
Revenue: none
Fiscal Note: none requested

HOUSE OF REPRESENTATIVES
STATE OF WASHINGTON

BILL REPORT

(as passed by committee)

Bill No.: HB 352

Companion Measure: SB 3534

Date: 2-23-81
Staff: Steve Lundin
Phone: 3-4808

1981 REGULAR session

Revising laws relating to sewer and water districts.

Original: ____
Amended: ____
Substitute: X

BRIEF TITLE: (from Status of Bills)
Sewer/water districts revis.

SPONSOR(S): (note if agency; committee; executive request)
Committee on Local Government and (OVER)

Reported by Committee on:	Recommendation:	Roll Call Vote:	FISCAL NOTE INFORMATION		
Local Government (18)	Sub DP (12)	12 Y 0 N	Prepared:	Attached:	Requested: n/a None

Majority Report signed by:
ISAACSON, LUNDQUIST, Barr, Barrett, Berleen, Burns, Chamberlain, Garrett, Hine, James, North, Stratton

Minority Report signed by: (if requested)

ANALYSIS: (background / summary / effect of amendments or substitute, as applicable)

BACKGROUND: A recent merger of a water district into a sewer district north of Seattle resulted in a situation where common territory was included within the boundaries of both the merging sewer district and a second sewer district. Questions arose as to who provides what utility service where and the ability of these districts to issue general obligation bonds and retire them with voter approved bond retirement tax levies. Failure of the boundary review board to provide adequate notice of such proposed merger to the second sewer district resulted in litigation questioning the merger.

SUMMARY: The bill (1) Validates the attempted merger of a water district into a sewer district where the merged district has acted as a merged district. (2) Provides that when two or more water districts, sewer districts, or merged sewer and water districts occupy common territory, the first district to provide a particular utility service in the area has the exclusive right to provide such service. (3) Allows propositions authorizing multi-year general obligation bond retirement levies to be placed before voters residing in less than an entire water district or less than an entire sewer district and the property taxes levied to retire the bonds are levied less than district-wide. Clean 2 or more of these districts occupy common territory.

EFFECT OF SUBSTITUTE: Technical changes. In addition, language in the intent section further clarifies the intent of the legislation.

☐ continued on reverse

Arguments presented for: (1) The sewer district questioning the validity of the merger will drop its lawsuit if the legislation is passed. (2) Straightens out an emerging problem where overlapping districts currently possess common powers to provide the same utility service. (3) Avoids the situation where double taxation ☒ continued on reverse

Arguments presented against:
None presented
☐ continued on reverse

Principal proponents: Mike Gusa, Wn. State Assn. of Water Districts; James Ellis, N.E. Lake Washington Sewer Dist.; Chip Davidson, N.E. Lake Washington Sewer Dist.

Principal opponents:
None

Attachments: Committee Roll Call Vote Sheet

SPONSORS (Cont.)
Representative Isaacson

ARGUMENTS PRESENTED FOR (Cont.)
to retire general obligation bonds could result on commonly held territory to fund utility improvements that are of no benefit to the residents of such area.

SUBSTITUTE HOUSE BILL 352

BACKGROUND: A recent merger of a water district into a sewer district north of Seattle resulted in a situation where common territory was included within the boundaries of both the merging sewer district and a second sewer district. Questions arose as to who provides what utility service where and the ability of these districts to issue general obligation bonds and retire them with voter approved bond retirement tax levies. Failure of the boundary review board to provide adequate notice of such proposed merger to the second sewer district resulted in litigation questioning the merger.

SUMMARY: The bill validates the attempted merger of a water district into a sewer district where the merged district has acted as a merged district. The bill provides that when two or more water districts, sewer districts, or merged sewer and water districts occupy common territory, the first district to provide a particular utility service in the area has the exclusive right to provide such service. The bill allows propositions authorizing multi-year general obligation bond retirement levies to be placed before voters residing in less than an entire water district or less than an entire sewer district and the property taxes levied to retire the bonds are levied less than district-wide when two or more of these districts occupy common territory.

1st Sub. H. B. 352 By House Committee on Local Government

Revising laws relating to sewer and water districts.

(DIGEST OF PROPOSED 1ST SUBSTITUTE)

Requires filing of a notice of intention with the boundary review board of proposed actions to establish or change the boundaries of a mutual sewer and water system or separate water system by a sewer district.

Permits a duly authorized water district to provide sewer service to property owners in areas within or without the district limits. Requires prior consent for such water district to offer services in an existing district within its area authorized to provide sewer service.

Requires prior consent for a sewer district to exercise water district powers in an area within its boundaries which is part of a district duly authorized to exercise such powers.

Authorizes a sewer district to issue general obligation bonds for water system purposes. Requires voter approval of bonds payable from excess tax levies for water system purposes. Limits tax levy to pay principal and interest to taxable property within the area which has authorized the indebtedness. Grants corresponding authority to water districts.

Clarifies provision for merger of sewer and water districts. Specifies the powers of a sewer and water district and their respective boards following merger. Prescribes issuance of general obligation bonds by either board.

Validates past attempts of a water district to merge into a sewer district under a 1969 law if the water district has maintained its organization as part of the sewer district since the attempted merger.

Declares an emergency and takes effect immediately.

--1981 REGULAR SESSION--

Feb 25 Majority; 1st substitute bill be substituted, do pass.
Passed to Rules committee for second reading.

H. B. 352 By Representative Isaacson (By House Committee on Local Government Request)

Revising laws relating to sewer and water districts.

Requires filing of a notice of intention with the boundary review board of proposed actions to establish or change the boundaries of a mutual sewer and water system or separate water system by a sewer district.

Permits a duly authorized water district to provide sewer service to property owners in areas within or without the district limits. Requires prior consent for such water district to offer services in an existing district within its area authorized to provide sewer service.

Requires prior consent for a sewer district to exercise water district powers in an area within its boundaries which is part of a district duly authorized to exercise such powers.

Authorizes a sewer district to issue general obligation bonds for water system purposes upon voter approval. Limits tax levy to pay principal and interest to taxable property within the area which has authorized the indebtedness.

Clarifies provision for merger of sewer and water districts. Specifies the powers of a sewer and water district and their respective boards following merger. Prescribes issuance of general obligation bonds by either board.

Validates past attempts of a water district to merge into a sewer district under a 1969 law if the water district has maintained its organization as part of the sewer district since the attempted merger.

Declares an emergency and takes effect immediately.

--1981 REGULAR SESSION--

Feb 11 Developed in HPM 294.
First reading, referred to Local Government.

RAY ISAACSON
EIGHTH DISTRICT

OLYMPIA OFFICE
340 HOUSE OFFICE BUILDING
OLYMPIA 98504
(206) 753-7826

RESIDENCE
2106 LEE BOULEVARD
RICHLAND, WASHINGTON 99352
(509) 946-5562

House of Representatives
STATE OF WASHINGTON
OLYMPIA

M E M O R A N D U M

TO: Senator Hal Zimmerman

FROM: Representative Ray Isaacson Ray

RE: HB 352 – Early Hearing Request in Senate Local Government Committee

DATE: March 20, 1981

I respectfully ask for an early hearing date on HB 352 (sewer/water districts revisions) when the Senate Local Government Committee begins to consider House bills.

This legislation was supported by the Washington Association of Water Districts and the Washington State Association of Sewer Districts. The bill had no opposition in my committee. It is identical to SB 3534 which was heard in your committee and is now in Senate Rules.

Your consideration in the passage of HB 352 is important and appreciated by me and all parties concerned. Thank you.

RI:cr

cc: Vic Moon, Senate Local Government Committee
Gary Robinson, Senate Local Government Committee

Vic
We need this bill
on the agenda.
Hal Zimmerman

RAY ISAACSON
EIGHTH DISTRICT

OLYMPIA OFFICE
340 HOUSE OFFICE BUILDING
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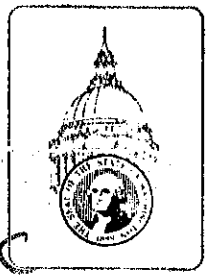

House of Representatives
STATE OF WASHINGTON
OLYMPIA

M E M O R A N D U M

TO: Senator Hal Zimmerman

FROM: Representative Ray Isaacson Ray

RE: HB 352 – Early Hearing Request in Senate Local Government Committee

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Your consideration in the passage of HB 352 is important and appreciated by me and all parties concerned. Thank you.

RI:cr

cc: Vic Moon, Senate Local Government Committee
Gary Robinson, Senate Local Government Committee

SUBSTITUTE
HOUSE BILL NO. 352

BY

Committee on Local Government
(Originally Sponsored By:
Committee on Local Government
and Representative Isaacson)

BRIEF TITLE

Revising laws relating to sewer and water districts.

HOUSE RECORD—

Filed by Committee and ordered printed
2-24-81
On motion Substituted for Original Bill, placed on calendar
FEB 25 1981 RULES

3/10/81 Read second time and passed to Rules for Third Reading

3/17/81 Read third time and

PASSED Yeas 98, Nays 0
3-17-81 Title Agree to
3-17-81 Sent to Senate

Chief Clerk.

SENATE RECORD—

MAR 18 1981 Received from House
Read first time and referred to Committee on
Reported back by
Committee with the recommendation
MAJORITY do pass
MAJORITY do pass as amended
MINORITY do not pass
That Substitute House Bill
be substituted therefor and that Substitute Bill Do Pass
Passed to second reading.

Read second time and

Read third time and

Yeas, Nays
Title Agreed to
Returned to House

Secretary of the Senate.

Received from the Senat

Enrolled
Signed, Speaker of the Hous
Signed, President of the Senat
Signed by the Governo

HOUSE RECORD—

Returned to Hous
and placed in Committee on Rules fo
third reading Referred t

Reported back b
Committee with the recommendation
MAJORITY do pass
MAJORITY do pass as amended
MINORITY do not pass
That Substitute House Bill
be substituted therefor and that Substitut
Bill Do Pass
Passed to second reading.

Read third time an

Yeas, Nays
Title Agreed
Sent to Sena

A-108

Chief Clerk.

16 of 27

AN ACT Relating to special purpose districts; amending section 9, chapter 189, Laws of 1967 as last amended by section 12, chapter 5, Laws of 1979 ex. sess. and RCW 36.93.090; amending section 5, chapter 210, Laws of 1941 and RCW 56.04.070; amending section 48, chapter 210, Laws of 1941 as last amended by section 3, chapter 103, Laws of 1959 and RCW 56.08.060; amending section 4, chapter 58, Laws of 1974 ex. sess. as last amended by section 1, chapter 12, Laws of 1980 and RCW 56.20.015; amending section 4, chapter 148, Laws of 1969 ex. sess. and RCW 56.36.040; amending section 6, chapter 148, Laws of 1969 ex. sess. and RCW 56.36.060; amending section 4, chapter 114, Laws of 1929 and RCW 57.04.070; amending section 3, chapter 251, Laws of 1953 as amended by section 4, chapter 108, Laws of 1959 and RCW 57.08.045; amending section 1, chapter 111, Laws of 1963 as last amended by section 69, chapter 141, Laws of 1979 and RCW 57.08.065; amending section 4, chapter 146, Laws of 1971 ex. sess. and RCW 57.40.130; amending section 6, chapter 146, Laws of 1971 ex. sess. and RCW 57.40.150; adding a new section to chapter 56.36 RCW; creating a new section; and declaring an emergency. CR81B F H -1321 ;1 PARTA ;4

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. Section 1. It is declared to be the public policy of the state of Washington to provide for the orderly growth and development of those areas of the state requiring public water service or sewer service and to secure the health and welfare of the people residing therein. The growth of urban population and the movement of people into suburban areas has

required the performance of such services by water districts and sewer districts and the development of such districts has created problems of conflicting jurisdiction and potential double taxation.

It is the purpose of this act to reduce the duplication of service and the conflict among jurisdictions by establishing the principle that the first in time is the first in right where districts overlap and by encouraging the consolidation of districts. It is also the purpose of this act to prevent the imposition of double taxation upon the same property by establishing a general classification of property which will be exempt from property taxation by a district when such property is within the jurisdiction of an established district duly authorized to provide service of like character.

Unless the context clearly requires otherwise, as used in this act, the term "district" means either a water district organized under Title 57 RCW or a sewer district organized under Title 56 RCW or a merged water and sewer district organized pursuant to chapter 57.40 or 56.36 RCW.

Sec. 2. Section 9, chapter 189, Laws of 1967 as last amended by section 12, chapter 5, Laws of 1979 ex. sess. and RCW 36.93.090 are each amended to read as follows:

Whenever any of the following described actions are proposed in a county in which a board has been established, the initiators of the action shall file a notice of intention with the board, which may review any such proposed actions pertaining to:

(1) The creation, dissolution, incorporation, disincorporation, consolidation, or change in the boundary of any city, town, or special purpose district, except that a board may not review the dissolution or disincorporation of a special purpose district which was dissolved or disincorporated pursuant to the provisions of chapter 36.96 RCW; or

(2) The assumption by any city or town of all or part of the assets, facilities, or indebtedness of a special purpose

district which lies partially within such city or town; or

(3) The establishment of or change in the boundaries of a mutual water and sewer system or separate sewer system by a water district pursuant to RCW 57.08.065 or chapter 57.40 RCW, as now or hereafter amended; or

(4) The establishment of or change in the boundaries of a mutual sewer and water system or separate water system by a sewer district pursuant to RCW 56.20.015 or chapter 56.36 RCW, as now or hereafter amended; or

(5) The extension of permanent water or sewer service outside of its existing corporate boundaries by a city, town, or special purpose district.

Sec. 3. Section 5, chapter 210, Laws of 1941 and RCW 56.04.070 are each amended to read as follows:

Whenever two or more petitions for the formation of a sewer district shall be filed as ((~~herein~~)) provided in this chapter, the petition describing the greater area shall supersede all others, and an election shall first be held thereunder, and no lesser sewer district shall ever be created within the limits in whole or in part of any other sewer district, except as provided in RCW 56.36.060, as now or hereafter amended.

Sec. 4. Section 48, chapter 210, Laws of 1941 as last amended by section 3, chapter 103, Laws of 1959 and RCW 56.08.060 are each amended to read as follows:

A sewer district may enter into contracts with any county, city, town, sewer district, water district, or any other municipal corporation, or with any private person, firm or corporation, for the acquisition, ownership, use, and operation of any property, facilities, or services, within or without the sewer district and necessary or desirable to carry out the purposes of the sewer district, and a sewer district or a water district duly authorized to exercise sewer district powers may provide sewer service to property owners ((~~outside~~)) in areas within or without the limits of the ((sewer)) district:

PROVIDED, That if any such area is located within another existing district duly authorized to exercise sewer district powers in such area, then sewer service may not be so provided by contract or otherwise without the consent by resolution of the board of commissioners of such other district.

Sec. 5. Section 4, chapter 58, Laws of 1974 ex. sess. as last amended by section 1, chapter 12, Laws of 1980 and RCW 56.20.015 are each amended to read as follows:

In addition to all of the powers and authorities set forth in Title 56 RCW, any sewer district shall have all of the powers of cities as set forth in chapter 35.44 RCW. Sewer districts may also exercise all of the powers permitted to a water district under Title 57 RCW, except that a sewer district may not exercise water district powers in any area within its boundaries which is part of an existing district which previously shall have been duly authorized to exercise water district powers in such area without the consent by resolution of the board of commissioners of such district.

A sewer district shall have the power to issue general obligation bonds for water system purposes: PROVIDED, That a proposition to authorize general obligation bonds payable from excess tax levies for water system purposes pursuant to chapters 57.16 and 57.20 RCW shall be submitted to all of the qualified voters within that part of the sewer district which is not contained within another existing district duly authorized to exercise water district powers, and the taxes to pay the principal of and interest on the bonds approved by such voters shall be levied only upon all of the taxable property within such part of the sewer district.

Sec. 6. Section 4, chapter 148, Laws of 1969 ex. sess. and RCW 56.36.040 are each amended to read as follows:

If at such election a majority of the voters in the water district or all or either of the water districts involved, shall vote in favor of the merger, the county election canvassing board shall so declare in its canvass, and the return of the

election shall be made within ten days after the date of such election. Upon completion of the return the merger shall be effective as to the sewer district and each water district in which the majority of voters voted in favor of the merger, and each such water district shall cease to exist as a separate entity and the area within such water district shall become a part of the sewer district. The water commissioners of any water district so merged shall cease to hold office, and the affairs of the merged districts shall be managed and conducted by the board of sewer commissioners of the sewer district, the members of which shall thereafter be elected in the manner provided in RCW 56.12.030.

Sec. 7. Section 6, chapter 148, Laws of 1969 ex. sess. and RCW 56.36.060 are each amended to read as follows:

Following merger, the sewer district and the board of commissioners thereof shall have all powers granted sewer districts by RCW 56.08.060 and 56.20.015 and shall have all other powers granted sewer districts by Title 56 RCW in any area within its boundaries which is not part of another existing district duly authorized to exercise sewer district powers in such area and shall have all powers granted water districts by RCW 57.08.045 and 57.08.065 and shall have all other powers granted water districts by Title 57 RCW in any area within its boundaries which is not part of another existing district duly authorized to exercise water district powers in such area. The sewer district shall have the power to issue revenue bonds to which are pledged water revenue, sewer revenue, or both water and sewer revenue, as well as the power to levy assessments against property specially benefited in ((the-manner-levied-by)) local improvement districts or utility local improvement districts, for improvements to the water system or the sewer system or both.

NEW SECTION. Sec. 8. There is added to chapter 56.36 RCW a new section to read as follows:

Each and all of the respective areas of land organized as

a water district and heretofore attempted to be merged into a sewer district under chapter 148 of the Laws of 1969, and amendments thereto, and which have maintained their organization as part of a sewer district since the date of such attempted merger, are hereby validated and declared to be a proper merger of a water district into a sewer district. Such district shall have the respective boundaries set forth in their merger proceedings as shown by the official files of the legislative authority of the county in which such merged district is located. All debts, contracts, bonds, and other obligations heretofore executed in connection with or in pursuance of such attempted organization, and any and all assessments or levies and all other actions taken by such districts or by their respective officers acting under such attempted organization, are hereby declared legal and valid and of full force and effect. Such districts may hereafter exercise their powers only to the extent permitted by and in accordance with the provisions of RCW 56.36.060, as now or hereafter amended.

Sec. 9. Section 4, chapter 114, Laws of 1929 and RCW 57.04.070 are each amended to read as follows:

Whenever two or more petitions for the formation of a water district shall be filed as ((~~herein~~)) provided in this chapter, the petition describing the greater area shall supersede all others and an election shall first be held thereunder, and no lesser water district shall ever be created within the limits in whole or in part of any water district, except as provided in RCW 57.40.150, as now or hereafter amended.

Sec. 10. Section 3, chapter 251, Laws of 1953 as amended by section 4, chapter 108, Laws of 1959 and RCW 57.08.045 are each amended to read as follows:

A water district may enter into contracts with any county, city, town, sewer district, water district, or any other municipal corporation, or with any private person or corporation, for the acquisition, ownership, use and operation

of any property, facilities, or services, within or without the water district and necessary or desirable to carry out the purposes of the water district, and a water district or sewer district duly authorized to exercise water district powers may provide water services to property owners ((outside)) in areas within or without the limits of the ((water)) district: PROVIDED, That if such area is located within another existing district duly authorized to exercise water district powers in such area, then water service may not be so provided by contract or otherwise without the consent by resolution of the board of commissioners of such other district.

Sec. 11. Section 1, chapter 111, Laws of 1963 as last amended by section 69, chapter 141, Laws of 1979 and RCW 57.08.065 are each amended to read as follows:

In addition to the powers now given water districts by law, they shall also have power to establish, maintain and operate a mutual water and sewer system or a separate sewer system within their water district area in the same manner as provided by law for the doing thereof in connection with water supply systems.

In addition thereto, a water district constructing, maintaining and operating a sanitary sewer system may exercise all the powers permitted to a sewer district under Title 56 RCW, including, but not limited to, the right to compel connections to the district's system, liens for delinquent sewer connection charges or sewer service charges, and all other powers presently exercised by or which may be hereafter granted to such sewer districts: PROVIDED, That a water district may not exercise sewer district powers in any area within its boundaries which is part of an existing district which previously shall have been duly authorized to exercise sewer district powers in such area without the consent by resolution of the board of commissioners of such other district: PROVIDED FURTHER, That no water district shall proceed to exercise the powers herein granted to establish, maintain, construct and operate any sewer system

without first obtaining written approval and certification of necessity so to do from the department of ecology and department of social and health services. Any comprehensive plan for a system of sewers or addition thereto or betterment thereof shall be approved by the same county and state officials as are required to approve such plans adopted by a sewer district.

A water district shall have the power to issue general obligation bonds for sewer system purposes: PROVIDED, That a proposition to authorize general obligation bonds payable from excess tax levies for sewer system purposes pursuant to chapter 56.16 RCW shall be submitted to all of the qualified voters within that part of the water district which is not contained within another existing district duly authorized to exercise sewer district powers, and the taxes to pay the principal of and interest on the bonds approved by such voters shall be levied only upon all of the taxable property within such part of the water district.

Sec. 12. Section 4, chapter 146, Laws of 1971 ex. sess. and RCW 57.40.130 are each amended to read as follows:

If at such election a majority of the voters in the sewer district or all or either of the sewer districts involved, shall vote in favor of the merger, the county election canvassing board shall so declare in its canvass, and the return of the election shall be made within ten days after the date of such election. Upon completion of the return the merger shall be effective as to the water district and each sewer district in which the majority of voters voted in favor of the merger, and each such sewer district shall cease to exist as a separate entity and the area within such sewer district shall become a part of the water district. The sewer commissioners of any sewer district so merged shall cease to hold office, and the affairs of the merged districts shall be managed and conducted by the board of water commissioners of the water district, the members of which shall thereafter be elected in the manner provided by RCW 57.12.020.

Sec. 13. Section 6, chapter 146, Laws of 1971 ex. sess. and RCW 57.40.150 are each amended to read as follows:

Following merger, the water district and the board of commissioners thereof shall have all powers granted water districts by RCW 57.08.045 and 57.08.065 and shall have all other powers granted water districts by Title 57 RCW in any area within its boundaries which is not part of another existing district duly authorized to exercise water district powers in such area and shall have all powers granted sewer districts by RCW 56.08.060 and 56.20.015 and shall have all other power granted sewer districts by Title 56 RCW in any area within its boundaries which is not part of another existing district duly authorized to exercise sewer district powers in such area. The water district shall have the power to issue revenue bonds to which are pledged sewer revenue, water revenue, or both sewer and water revenue, as well as the power to levy assessments against property specially benefited in ((~~the manner levied by~~)) local improvement districts or utility local improvement districts, for improvements to the sewer system or the water system or both.

NEW SECTION. Sec. 14. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 15. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately.

REPORT OF STANDING COMMITTEE

April 7, 1981

SUBSTITUTE HOUSE BILL NO. 352

(Type in brief title exactly as it appears on back cover of original bill)

revising laws relating to sewer and water districts

(reported by Committee on Local Government): (9)

Recommendation - Majority

X Do pass

___ Do pass as amended

___ That Substitute Senate Bill No. _____ be substituted therefor, and the substitute bill do pass

___ Other _____

Zimmerman, Chairman
Bauer
Charnley
Fuller
Gould
Lee
McCaslin
Talley
Wilson

Hal Zimmerman, Chairman

Al Bauer

Donn Charnley

Bill Fuller

Sue Gould

Eleanor Lee

Bob McCaslin

Don Talley

Bruce Wilson

Passed to Committee on Rules for Second Reading

COMMITTEE: LOCAL GOVERNMENT

DATE: April 7, 1981

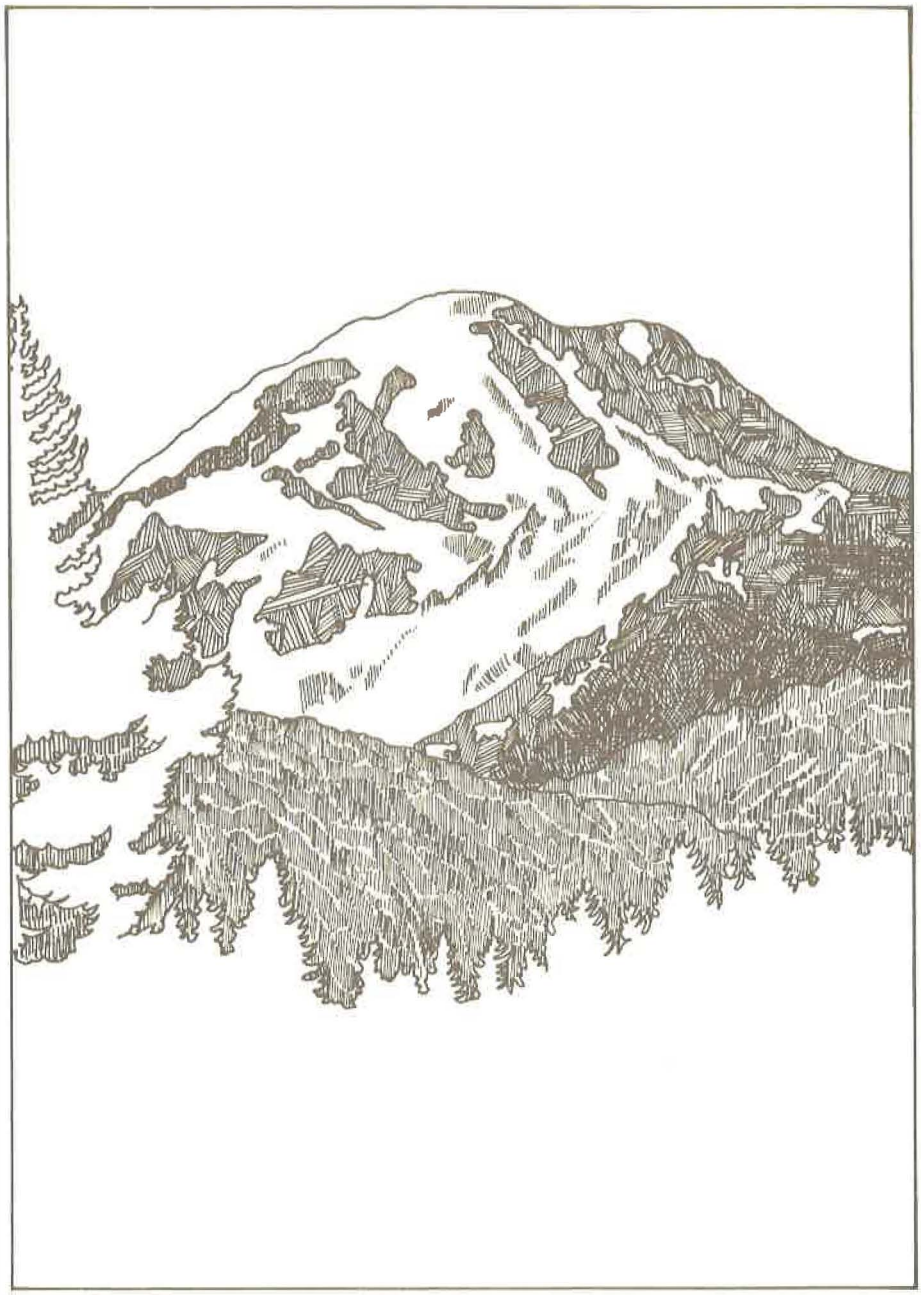
BILL NO. SHB 352

SHORT TITLE: SEWER/WATER DISTRICTS REVIS.

ATTENDANCE ROSTER

PLEASE PRINT NAME	ORGANIZATION	MAILING ADDRESS	PHONE	WISH TO TESTIFY? (YES/NO)	IF SO, PRO/CON
Chip Davidson	Northeast Lake Wash. Sewer & Water Dist	STREET 6201 NE 175th CITY Seattle WA ZIP 98155	486 7141	yes	Pro.
Mike Gusa	Wa. St. Assn. of Water Dists	STREET 1010 Midway Dr. Rm CITY Olym. ZIP 98506	459-7634	yes	pro
Jay Reich	Preston, Thorgrimson, Ellis and Holman	STREET 2000 I.B.M. Bldg CITY Seattle, Wa. ZIP 98101	623-7580		PRO
		STREET CITY ZIP			
		STREET CITY ZIP			
		STREET CITY ZIP			
		STREET CITY ZIP			
		STREET CITY ZIP			
		STREET CITY ZIP			

APPENDIX D



1981 FINAL LEGISLATIVE REPORT

Forty-Seventh Legislature of Washington State

HB 341

C 155 L 81

BRIEF TITLE: Enacting the Business Opportunity Fraud Act.

SPONSORS: House Committee on Labor and Economic Development and Representatives Sanders, Patrick, Brown, Lux, Garrett, Brekke, King (J.), Scott, Monohon, Nelson (G.) and Fiske (By Department of Licensing, Attorney General Request)

INITIAL HOUSE COMMITTEE: Labor and Economic Development

ADDITIONAL HOUSE COMMITTEE: Ways and Means

SENATE COMMITTEE: Commerce and Labor

BACKGROUND:

In the past few years, consumers around the nation have become involved in fraudulent business "opportunities" whereby a consumer pays a large amount of money to a company which promises to assist him or her in starting a business and/or provide inventory and equipment necessary to operate a business. The types of opportunities offered frequently involve rack sales, vending machines and distributorships. The consumer is asked to put up a large sum of money in exchange for assistance which the company is often unable or unwilling to provide. Claims of expected return on investment and the types of assistance available are often exaggerated.

Since 1977, complaints received regarding these fraudulent business opportunities by the Consumer Protection Division of the Attorney General's Office have increased from 35 annually to 167 complaints in 1980. The Division has filed suit in several cases. In one case the damages to consumers amounted to $184,224.

Twelve states have enacted business opportunity fraud laws enabling the Attorney General and prosecuting attorneys to institute legal action to preclude or forestall consumers from being victimized by such "get–rich–quick schemes".

SUMMARY:

Three levels of fraud enforcement are created: administrative, civil and criminal.

A person proposing to sell or lease business opportunities must provide buyers with a detailed written disclosure document 48 hours prior to the buyer's signing a contract. The seller must register, be bonded ($50,000) and pay a prescribed fee before advertising or soliciting and specific, bold warnings must be set forth in the written contract. The act applies to purchases of at least $300 but is inapplicable to franchises, security investments and real estate transactions.

Unlawful acts are enumerated. The Attorney General, the Department of Licensing and prosecuting attorneys are authorized to enjoin a violation. Civil and criminal penalties are prescribed. The Department of Licensing is authorized to investigate in or outside the state and issue cease and desist orders. The Department of Licensing may appoint an administrator to carry out this act.

VOTES ON FINAL PASSAGE:

House	95	3	
Senate	47	0	(Senate amended)
House	94	3	(House concurred)

EFFECTIVE: July 1, 1981

SHB 352

C 45 L 81

BRIEF TITLE: Revising laws relating to sewer and water districts.

SPONSORS: House Committee on Local Government (Originally Sponsored By House Committee on Local Government and Representative Isaacson)

HOUSE COMMITTEE: Local Government

SENATE COMMITTEE: Local Government

BACKGROUND:

A recent merger of a water district into a sewer district north of Seattle resulted in a situation where common territory was included within the boundaries of both the merged sewer district and a second sewer district. Questions arose as to which districts provide what utility service where and as to the ability of these districts to issue general obligation bonds and retire them with voter approved bond retirement tax levies. Failure of the boundary review board to provide adequate notice of the proposed merger to the second sewer district resulted in litigation questioning the merger.

SUMMARY:

Any attempted merger of a water district into a sewer district is validated if the merged district has acted as a merged district. When two or more water districts, sewer districts, or merged sewer and water districts occupy common territory, the first district to provide a particular service in the common territory has the exclusive right to continue providing the service. When two or more water or sewer districts occupy common territory, propositions authorizing multi-year general obligation bond retirement levies are authorized to be placed before voters residing in less than the entire water district or less than the entire sewer district in which case property taxes levied to retire the bonds are levied less than district-wide.

VOTES ON FINAL PASSAGE:

House 98 0
Senate 46 1

EFFECTIVE: April 22, 1981

HB 354

C 157 L 81

BRIEF TITLE: Transferring some functions of the state planning and community affairs agency to the office of financial management.

SPONSORS: House Committee on State Government and Representatives Addison and Walk

HOUSE COMMITTEE: State Government

SENATE COMMITTEE: State Government

BACKGROUND:

The State Planning Advisory Council was scheduled for termination and review on June 30, 1981, under the Washington Sunset Act. In the review process, the Legislative Budget Committee concluded that no records exist for the Planning Advisory Council since January 1973, that the council is currently inactive and that all seats on the council are vacant. Further, the advisory role of this council has been assumed by another statutory advisory body, the Planning and Community Affairs Committee.

The Legislative Budget Committee report recommended allowing the Planning Advisory Council to terminate. Some functions officially assigned to the Planning and Community Affairs Agency are being performed by the Office of Financial Management, such as determining population for purposes of consolidation and annexation of cities and towns. In other instances, several code provisions were found referring to PAC which require deletion to accomplish elimination of the council.

SUMMARY:

The State Planning Advisory Council is abolished and statutory references to the council are deleted. The council's duties relating to the determination of population for purposes of consolidation and annexation of municipal corporations are assumed by the Office of Financial Management.

Duties of the Office of Financial Management relating to inventory of state land resources are recodified in the chapter of law dealing with the Office of Financial Management.

VOTES ON FINAL PASSAGE:

House 97 1
Senate 47 1

EFFECTIVE: May 14, 1981

HB 364

C 54 L 81

BRIEF TITLE: Establishing a Washington state scholars program.

SPONSORS: Representatives Vander Stoep, Bender, Dickie, Galloway, Burns, Nisbet, Barnes, Tupper, Heck, Teutsch, Ellis, Granlund and Wang

HOUSE COMMITTEE: Education

SENATE COMMITTEE: Education

BACKGROUND:

There has not been any systematic state recognition of the academic achievement of outstanding graduating high school seniors in the state. It has been suggested that a state scholars program could bring those outstanding students to the attention of the public, colleges and universities and those who award private scholarships.

SUMMARY:

A state scholars program is established. Each year three graduating seniors from each legislative district will be chosen. The purposes of the program are to:

APPENDIX E

government and its existing public institutions, and shall take effect July 1, 1985.

Passed the House March 12, 1985.
Passed the Senate April 11, 1985.
Approved by the Governor April 23, 1985.
Filed in Office of Secretary of State April 23, 1985.

CHAPTER 141

[Substitute House Bill No. 1232]
WATER AND SEWER DISTRICTS——ANNEXATIONS

AN ACT Relating to water and sewer districts; and amending RCW 36.94.420, 56.04-.070, 56.12.030, 56.24.120, 56.32.070, 57.04.070, 57.12.020, 57.24.070, and 57.32.130.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. Section 2, chapter 147, Laws of 1984 and RCW 36.94.420 are each amended to read as follows:

If so provided in the transfer agreement, the area served by the system shall, upon completion of the transfer, be deemed annexed to and become a part of the water or sewer district acquiring the system. The county shall provide notice of the hearing by the county legislative authority on the ordinance executing the transfer agreement under RCW 36.94.330 as follows: (1) By mailed notice to all ratepayers served by the system at least fifteen days prior to the hearing; and (2) by notice in a newspaper of general circulation once at least fifteen days prior to the hearing.

In the event of an annexation under this section resulting from the transfer of a system of sewerage or combined water and sewer systems from a county to a water district governed by Title 57 RCW, the water district shall have all the powers of a water district provided by RCW 57.40.150, as if a sewer district had been merged into a water district. In the event of an annexation under this section as a result of the transfer of a system of water or combined water and sewer systems from a county to a sewer district governed by Title 56 RCW, the sewer district shall have all the powers of a sewer district provided by RCW 56.36.060 as if a water district had been merged into the sewer district.

Sec. 2. Section 5, chapter 210, Laws of 1941 as amended by section 3, chapter 45, Laws of 1981 and RCW 56.04.070 are each amended to read as follows:

Whenever two or more petitions for the formation of a sewer district shall be filed as provided in this chapter, the petition describing the greater area shall supersede all others, and an election shall first be held thereunder, and no lesser sewer district shall ever be created within the limits in whole or in part of any other sewer district, except as provided in RCW 56.36.060 and 36.94.420, as now or hereafter amended.

Sec. 3. Section 8, chapter 210, Laws of 1941 as last amended by section 2, chapter 169, Laws of 1981 and RCW 56.12.030 are each amended to read as follows:

Nominations for the first board of commissioners to be elected at the election for the formation of the sewer district shall be by petition of fifty qualified electors or ten percent of the qualified electors of the district, whichever is the smaller. The petition shall be filed in the auditor's office of the county in which the district is located at least thirty days before the election. Thereafter candidates for the office of sewer commissioner shall file declarations of candidacy and their election shall be conducted as provided by the general elections laws. A vacancy or vacancies shall be filled by appointment by the remaining commissioner or commissioners until the next regular election for commissioners: PROVIDED, That if there are two vacancies on the board, one vacancy shall be filled by appointment by the remaining commissioner and the one remaining vacancy shall be filled by appointment by the then two commissioners and said appointed commissioners shall serve until the next regular election for commissioners((: ~~PROVIDED FURTHER, That~~)). If the vacancy or vacancies remain unfilled within six months of its or their occurrence, the county legislative authority in which the district is located shall make the necessary appointment or appointments. If there is a vacancy of the entire board a new board may be appointed by the board of county commissioners. Any person residing in the district who is at the time of election a qualified voter may vote at any election held in the sewer district.

All expense of elections for the formation or reorganization of a sewer district shall be paid by the county in which the election is held and the expenditure is hereby declared to be for a county purpose, and the money paid for that purpose shall be repaid to the county by the district if formed or reorganized.

Sec. 4. Section 6, chapter 11, Laws of 1967 ex. sess. and RCW 56.24-.120 are each amended to read as follows:

A petition for annexation of an area contiguous to a sewer district may be made in writing, addressed to and filed with the board of commissioners of the district to which annexation is desired. It must be signed by the owners, according to the records of the county auditor, of not less than sixty percent of the area of land for which annexation is petitioned, excluding county and state rights of way, parks, tidelands, lakes, retention ponds, and stream and water courses. Additionally, the petition shall set forth a description of the property according to government legal subdivisions or legal plats, and shall be accompanied by a plat which outlines the boundaries of the property sought to be annexed. Such county and state properties shall be excluded from local improvement districts or utility local improvement districts in the annexed area and from special assessments, rates, or charges of the district except where service has been regulated and provided to such

properties. The owners of such property shall be invited to be included within local improvement districts or utility local improvement districts at the time they are proposed for formation.

Sec. 5. Section 8, chapter 197, Laws of 1967 and RCW 56.32.070 are each amended to read as follows:

The sewer commissioners of all sewer districts consolidated into any new consolidated sewer district shall become sewer commissioners thereof until their respective terms of office expire. ((~~When the terms of expiration reduce the total number of remaining sewer commissioners to less than three then the board of commissioners of the consolidated sewer district shall be maintained at the number of three, in accordance with the provisions of RCW 56.12.020 and 56.12.030~~)) At each election of sewer commissioners following the consolidation, only one position shall be filled, so that as the terms of office expire the total number of sewer commissioners in the consolidated sewer district shall be reduced to three.

Sec. 6. Section 4, chapter 114, Laws of 1929 as amended by section 9, chapter 45, Laws of 1981 and RCW 57.04.070 are each amended to read as follows:

Whenever two or more petitions for the formation of a water district shall be filed as provided in this chapter, the petition describing the greater area shall supersede all others and an election shall first be held thereunder, and no lesser water district shall ever be created within the limits in whole or in part of any water district, except as provided in RCW 57.40.150 and 36.94.420, as now or hereafter amended.

Sec. 7. Section 3, chapter 18, Laws of 1959 as last amended by section 1, chapter 169, Laws of 1981 and RCW 57.12.020 are each amended to read as follows:

Nominations for the first board of commissioners to be elected at the election for the formation of the water district shall be by petition of at least twenty-five percent of the qualified electors of the district, or twenty-five of the qualified electors of the district, whichever is lesser, filed in the auditor's office of the county in which the district is located, at least thirty days prior to the election. Thereafter, candidates for the office of water commissioners shall file declarations of candidacy and their election shall be conducted as provided by the general election laws. A vacancy or vacancies on the board shall be filled by appointment by the remaining commissioner or commissioners until the next regular election for commissioners: PROVIDED, That if there are two vacancies on the board, one vacancy shall be filled by appointment by the remaining commissioner and the one remaining vacancy shall be filled by appointment by the then two commissioners and said appointed commissioners shall serve until the next regular election for commissioners((~~: PROVIDED FURTHER, That~~)). If the vacancy or vacancies remain unfilled within six months of its or their occurrence, the

county legislative authority in which the district is located shall make the necessary appointment or appointments. If there is a vacancy of the entire board a new board may be appointed by the board of county commissioners.

Any person residing in the district who is a qualified voter under the laws of the state may vote at any district election.

Sec. 8. Section 18, chapter 251, Laws of 1953 and RCW 57.24.070 are each amended to read as follows:

A petition for annexation of an area contiguous to a water district may be made in writing, addressed to and filed with the board of commissioners of the district to which annexation is desired. It must be signed by the owners, according to the records of the county auditor, of not less than sixty percent of the area of land for which annexation is petitioned, excluding county and state rights of way, parks, tidelands, lakes, retention ponds, and stream and water courses. Additionally, the petition shall set forth a description of the property according to government legal subdivisions or legal plats, and shall be accompanied by a plat which outlines the boundaries of the property sought to be annexed. Such county and state properties shall be excluded from local improvement districts or utility local improvement districts in the annexed area and from special assessments, rates, or charges of the district except where service has been regulated and provided to such properties. The owners of such property shall be invited to be included within local improvement districts or utility local improvement districts at the time they are proposed for formation.

Sec. 9. Section 13, chapter 267, Laws of 1943 and RCW 57.32.130 are each amended to read as follows:

The water commissioners of all water districts consolidated into any new consolidated water district shall become water commissioners thereof until their respective terms of office expire. ((~~When the terms of expiration reduce the total number of remaining water commissioners to less than three then the board of commissioners of the consolidated water district shall be maintained at the number of three, in accordance with the provisions of RCW 57.12.020 and 57.12.030~~)) At each election of water commissioners following the consolidation, only one position shall be filled, so that as the terms of office expire the total number of water commissioners in the consolidated water district shall be reduced to three.

Passed the House March 19, 1985.
Passed the Senate April 15, 1985.
Approved by the Governor April 23, 1985.
Filed in Office of Secretary of State April 23, 1985.

APPENDIX F

SUBSTITUTE HOUSE BILL NO. 1232

State of Washington 49th Legislature 1985 Regular Session

by Committee on Local Government (originally sponsored by Representatives Haugen and May)

Read first time 3/8/85 and passed to Committee on Rules.

AN ACT Relating to water and sewer districts; and amending RCW 36.94.420, 56.04.070, 56.12.030, 56.24.120, 56.32.070, 57.04.070, 57.12.020, 57.24.070, and 57.32.130.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

Sec. 1. Section 2, chapter 147, Laws of 1984 and RCW 36.94.420 are each amended to read as follows:

If so provided in the transfer agreement, the area served by the system shall, upon completion of the transfer, be deemed annexed to and become a part of the water or sewer district acquiring the system. The county shall provide notice of the hearing by the county legislative authority on the ordinance executing the transfer agreement under RCW 36.94.330 as follows: (1) By mailed notice to all ratepayers served by the system at least fifteen days prior to the hearing; and (2) by notice in a newspaper of general circulation once at least fifteen days prior to the hearing.

In the event of an annexation under this section resulting from the transfer of a system of sewerage or combined water and sewer systems from a county to a water district governed by Title 57 RCW, the water district shall have all the powers of a water district provided by RCW 57.40.150, as if a sewer district had been merged into a water district. In the event of an annexation under this section as a result of the transfer of a system of water or combined water and sewer systems from a county to a sewer district governed by Title 56 RCW, the sewer district shall have all the powers of a sewer district provided by RCW 56.36.060 as if a water district had been merged into the sewer district.

Sec. 2. Section 5, chapter 210, Laws of 1941 as amended by section 3, chapter 45, Laws of 1981 and RCW 56.04.070 are each

amended to read as follows:

Whenever two or more petitions for the formation of a sewer district shall be filed as provided in this chapter, the petition describing the greater area shall supersede all others, and an election shall first be held thereunder, and no lesser sewer district shall ever be created within the limits in whole or in part of any other sewer district, except as provided in RCW 56.36.060 and 36.94.420, as now or hereafter amended.

Sec. 3. Section 8, chapter 210, Laws of 1941 as last amended by section 2, chapter 169, Laws of 1981 and RCW 56.12.030 are each amended to read as follows:

Nominations for the first board of commissioners to be elected at the election for the formation of the sewer district shall be by petition of fifty qualified electors or ten percent of the qualified electors of the district, whichever is the smaller. The petition shall be filed in the auditor's office of the county in which the district is located at least thirty days before the election. Thereafter candidates for the office of sewer commissioner shall file declarations of candidacy and their election shall be conducted as provided by the general elections laws. A vacancy or vacancies shall be filled by appointment by the remaining commissioner or commissioners until the next regular election for commissioners: PROVIDED, That if there are two vacancies on the board, one vacancy shall be filled by appointment by the remaining commissioner and the one remaining vacancy shall be filled by appointment by the then two commissioners and said appointed commissioners shall serve until the next regular election for commissioners((:--PROVIDED-FURTHER,-That)). If the vacancy or vacancies remain unfilled within six months of its or their occurrence, the county legislative authority in which the district is located shall make the necessary appointment or appointments. If there is a vacancy of the entire board a new board may be appointed by the board of county commissioners. Any person residing in the district who is at the time of election a qualified voter may vote at any election held in the sewer district.

All expense of elections for the formation or reorganization of a sewer district shall be paid by the county in which the election is

held and the expenditure is hereby declared to be for a county purpose, and the money paid for that purpose shall be repaid to the county by the district if formed or reorganized.

Sec. 4. Section 6, chapter 11, Laws of 1967 ex. sess. and RCW 56.24.120 are each amended to read as follows:

A petition for annexation of an area contiguous to a sewer district may be made in writing, addressed to and filed with the board of commissioners of the district to which annexation is desired. It must be signed by the owners, according to the records of the county auditor, of not less than sixty percent of the area of land for which annexation is petitioned, excluding county and state rights of way, parks, tidelands, lakes, retention ponds, and stream and water courses. Additionally, the petition shall set forth a description of the property according to government legal subdivisions or legal plats, and shall be accompanied by a plat which outlines the boundaries of the property sought to be annexed. Such county and state properties shall be excluded from local improvement districts or utility local improvement districts in the annexed area and from special assessments, rates, or charges of the district except where service has been regulated and provided to such properties. The owners of such property shall be invited to be included within local improvement districts or utility local improvement districts at the time they are proposed for formation.

Sec. 5. Section 8, chapter 197, Laws of 1967 and RCW 56.32.070 are each amended to read as follows:

The sewer commissioners of all sewer districts consolidated into any new consolidated sewer district shall become sewer commissioners thereof until their respective terms of office expire. ((When-the terms-of-expiration--reduce--the--total--number--of--remaining--sewer commissioners--to--less-than-three-then-the-board-of-commissioners-of the-consolidated-sewer-district-shall-be-maintained-at-the-number--of three;--in--accordance--with--the--provisions--of--RCW--56.12.020-and 56.12.030)) At each election of sewer commissioners following the consolidation, only one position shall be filled, so that as the terms of office expire the total number of sewer commissioners in the

consolidated sewer district shall be reduced to three.

Sec. 6. Section 4, chapter 114, Laws of 1929 as amended by section 9, chapter 45, Laws of 1981 and RCW 57.04.070 are each amended to read as follows:

Whenever two or more petitions for the formation of a water district shall be filed as provided in this chapter, the petition describing the greater area shall supersede all others and an election shall first be held thereunder, and no lesser water district shall ever be created within the limits in whole or in part of any water district, except as provided in RCW 57.40.150 and 36.94.420, as now or hereafter amended.

Sec. 7. Section 3, chapter 18, Laws of 1959 as last amended by section 1, chapter 169, Laws of 1981 and RCW 57.12.020 are each amended to read as follows:

Nominations for the first board of commissioners to be elected at the election for the formation of the water district shall be by petition of at least twenty-five percent of the qualified electors of the district, or twenty-five of the qualified electors of the district, whichever is lesser, filed in the auditor's office of the county in which the district is located, at least thirty days prior to the election. Thereafter, candidates for the office of water commissioners shall file declarations of candidacy and their election shall be conducted as provided by the general election laws. A vacancy or vacancies on the board shall be filled by appointment by the remaining commissioner or commissioners until the next regular election for commissioners: PROVIDED, That if there are two vacancies on the board, one vacancy shall be filled by appointment by the remaining commissioner and the one remaining vacancy shall be filled by appointment by the then two commissioners and said appointed commissioners shall serve until the next regular election for commissioners((:--PROVIDED-FURTHER,-That)). If the vacancy or vacancies remain unfilled within six months of its or their occurrence, the county legislative authority in which the district is located shall make the necessary appointment or appointments. If there is a vacancy of the entire board a new board may be appointed

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Sec. 9. Section 13, chapter 267, Laws of 1943 and RCW 57.32.130 are each amended to read as follows:

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Sec. 9

1 consolidated water district shall be reduced to three.

IN THE LEGISLATURE
of the
STATE OF WASHINGTON

CERTIFICATION OF ENROLLED ENACTMENT

SUBSTITUTE HOUSE BILL NO. 1232

Chapter 141, Laws of 1985

49th Legislature
Regular Session

Passed the House March 19, 1985

Yeas 95 *Nays* 0

Passed the Senate April 15, 1985

Yeas 45 *Nays* 1

CERTIFICATE

I, Dennis L. Heck, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is enrolled Substitute House Bill No 1232 *as passed by the House of Representatives and the Senate on the dates hereon set forth.*

Dennis L. Heck

DENNIS L. HECK, *Chief Clerk*

SUBSTITUTE HOUSE BILL NO. 1232

State of Washington 49th Legislature 1985 Regular Session

by Committee on Local Government (originally sponsored by Representatives Haugen and May)

Read first time 3/8/85 and passed to Committee on Rules.

AN ACT Relating to water and sewer districts; and amending RCW 36.94.420, 56.04.070, 56.12.030, 56.24.120, 56.32.070, 57.04.070, 57.12.020, 57.24.070, and 57.32.130.

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amended to read as follows:

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Sec. 3. Section 8, chapter 210, Laws of 1941 as last amended by section 2, chapter 169, Laws of 1981 and RCW 56.12.030 are each amended to read as follows:

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held and the expenditure is hereby declared to be for a county purpose, and the money paid for that purpose shall be repaid to the county by the district if formed or reorganized.

Sec. 4. Section 6, chapter 11, Laws of 1967 ex. sess. and RCW 56.24.120 are each amended to read as follows:

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Sec. 5. Section 8, chapter 197, Laws of 1967 and RCW 56.32.070 are each amended to read as follows:

The sewer commissioners of all sewer districts consolidated into any new consolidated sewer district shall become sewer commissioners thereof until their respective terms of office expire. ((When the terms of expiration reduce the total number of remaining sewer commissioners to less than three then the board of commissioners of the consolidated sewer district shall be maintained at the number of three, in accordance with the provisions of RCW 56.12.020 and 56.12.030)) At each election of sewer commissioners following the consolidation, only one position shall be filled, so that as the terms of office expire the total number of sewer commissioners in the

consolidated sewer district shall be reduced to three.

Sec. 6. Section 4, chapter 114, Laws of 1929 as amended by section 9, chapter 45, Laws of 1981 and RCW 57.04.070 are each amended to read as follows:

Whenever two or more petitions for the formation of a water district shall be filed as provided in this chapter, the petition describing the greater area shall supersede all others and an election shall first be held thereunder, and no lesser water district shall ever be created within the limits in whole or in part of any water district, except as provided in RCW 57.40.150 and 36.94.420, as now or hereafter amended.

Sec. 7. Section 3, chapter 18, Laws of 1959 as last amended by section 1, chapter 169, Laws of 1981 and RCW 57.12.020 are each amended to read as follows:

Nominations for the first board of commissioners to be elected at the election for the formation of the water district shall be by petition of at least twenty-five percent of the qualified electors of the district, or twenty-five of the qualified electors of the district, whichever is lesser, filed in the auditor's office of the county in which the district is located, at least thirty days prior to the election. Thereafter, candidates for the office of water commissioners shall file declarations of candidacy and their election shall be conducted as provided by the general election laws. A vacancy or vacancies on the board shall be filled by appointment by the remaining commissioner or commissioners until the next regular election for commissioners: PROVIDED, That if there are two vacancies on the board, one vacancy shall be filled by appointment by the remaining commissioner and the one remaining vacancy shall be filled by appointment by the then two commissioners and said appointed commissioners shall serve until the next regular election for commissioners((:--~~PROVIDED FURTHER, That~~)). If the vacancy or vacancies remain unfilled within six months of its or their occurrence, the county legislative authority in which the district is located shall make the necessary appointment or appointments. If there is a vacancy of the entire board a new board may be appointed

by the board of county commissioners.

Any person residing in the district who is a qualified voter under the laws of the state may vote at any district election.

Sec. 8. Section 18, chapter 251, Laws of 1953 and RCW 57.24.070 are each amended to read as follows:

A petition for annexation of an area contiguous to a water district may be made in writing, addressed to and filed with the board of commissioners of the district to which annexation is desired. It must be signed by the owners, according to the records of the county auditor, of not less than sixty percent of the area of land for which annexation is petitioned, excluding county and state rights of way, parks, tidelands, lakes, retention ponds, and stream and water courses. Additionally, the petition shall set forth a description of the property according to government legal subdivisions or legal plats, and shall be accompanied by a plat which outlines the boundaries of the property sought to be annexed. Such county and state properties shall be excluded from local improvement districts or utility local improvement districts in the annexed area and from special assessments, rates, or charges of the district except where service has been regulated and provided to such properties. The owners of such property shall be invited to be included within local improvement districts or utility local improvement districts at the time they are proposed for formation.

Sec. 9. Section 13, chapter 267, Laws of 1943 and RCW 57.32.130 are each amended to read as follows:

The water commissioners of all water districts consolidated into any new consolidated water district shall become water commissioners thereof until their respective terms of office expire. ((When-the terms-of-expiration--reduce--the--total--number--of--remaining--water commissioners--to--less-than-three-then-the-board-of-commissioners-of the-consolidated-water-district-shall-be-maintained-at-the-number--of three,--in--accordance--with--the--provisions--of--RCW--57.12.020-and 57.12.030)) At each election of water commissioners following the consolidation, only one position shall be filled, so that as the terms of office expire the total number of water commissioners in the

Sec. 9

1 consolidated water district shall be reduced to three.

Passed the House March 19, 1985.

Wayne Ehle
Speaker of the House.

Passed the Senate April 15, 1985.

John A. Cherberg
President of the Senate.

Approved April 23, 1985

Governor of the State of Washington

FILED
APR 23 1985
SECRETARY OF STATE
STATE OF WASHINGTON
4:49 pm.

Appropriation:_____
Revenue:_____
Fiscal Note: N/A

HOUSE BILL REPORT

HB 1232

BY Representative Haugen

Relating to water and sewer districts.

House Committee on Local Government

House Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. (15)
SIGNED BY Representatives Haugen, Chair; Nutley, Vice CHair; Allen, Bristow, Brough, Doty, Ebersole, Hine, Isaacson, May, Patrick, Rayburn, Smitherman, Winsley and Zellinsky.

House Minority Report:
SIGNED BY

House Staff: Steve Lundin (786-7127)

As Reported by Committee on Local Government March 8, 1985

BACKGROUND: Counties are authorized to operate sewer systems, water systems, or combined water and sewer systems. Counties are authorized to transfer such systems to sewer or water districts. Such a transfer is deemed to constitute an annexation of the area served by the sewer or water system to the sewer or water district.

Water districts can operate sewer systems pursuant to the laws of sewer districts. Sewer districts can operate water systems pursuant to the laws of water districts.

A sewer district generally cannot be created that includes territory in another sewer district. A water district generally cannot be created that includes territory in another water district. However, a sewer district and water district may merge, where either the sewer district includes territory from another water district in part of its boundaries or the water district includes territory from another sewer district in part of its boundaries, but the water systems or sewer systems of the merged district shall not compete with those of the other sewer district or water district.

Vacancies on a sewer district board or water district board, where at least one commissioner remains on the board, are filled by action of the remaining board member or members.

Areas contiguous to a sewer district or water district may annex to the district if a petition requesting such annexation is signed by the owners of at least 60 percent of the land area.

When two or more sewer districts, or two or more water districts, consolidate, there are no elections for new commissioners until less than three commissioners remain on the board, at which time a new commissioner or commissioners are elected to provide for a three member board.

SUMMARY: SUBSTITUTE BILL: Whenever a county transfers a sewer system or combined sewer and water system to a water district, the water district shall have the authority to operate the sewer system. Whenever a county transfers a water system or a combined water and sewer system to a sewer district, the sewer district shall have the authority to operate the water system.

A water district that includes a county sewer system within part of its boundaries may accept the sewer system from a county. A sewer district that includes a county water system within part of its boundaries may accept a water system from a county.

If a vacancy on a sewer district or water district board remains unfilled for six months, the county legislative authority shall make the necessary appointment or appointments.

Ownerships of most county or state lands are not considered under the 60 percent ownership petition method of annexation to a sewer or water district. The county and state properties included in such annexations are not subject to the sewer or water districts special assessments, rates or charges, except where service has been requested and provided to the properties.

At the initial elections following the consolidation of two or more sewer districts, or two or more water districts, one commissioner position shall be filled, so that gradually the number of commissioners is reduced to three persons.

SUBSTITUTE BILL COMPARED TO ORIGINAL: Technical changes, correcting the term "sewer" district made in water district statutes to "water" district.

Appropriation:

Revenue:

Fiscal Note: Not Requested.

Effective Date:

HOUSE COMMITTEE - Testified For: Steve Gano, Wash. Assn. Sewer Districts.

HOUSE COMMITTEE - Testified Against: None Presented.

HOUSE COMMITTEE - Testimony For: (1) This clarifies existing law. (2) This gives sewer and water districts the needed authority to operate the water and sewer facilities a county may transfer to them.

HOUSE COMMITTEE - Testimony Against: None Presented.

HB 1232

HOUSE OF REPRESENTATIVES

Olympia, Washington

BILL ANALYSIS

Bill No. HB 1232

Comp. Meas. _____

Relating to water and sewer districts
Brief Title

Status In Comm

Date 3-3-85

Rep. Haugen
Sponsor

Staff Contact Lundin

Committee on HLG

BACKGROUND:

SUMMARY: HB 1232 is a title only bill.

PROPOSED SUBSTITUTE HOUSE BILL 1232

BACKGROUND:

Counties are authorized to operate sewer systems, water systems, or combined water and sewer systems. Counties are authorized to transfer such systems to sewer or water district. Such a transfer is deemed to constitute an annexation of the area served by the sewer or water system to the sewer or water district.

Water districts can operate sewer systems pursuant to the laws of sewer districts. Sewer districts can operate water systems pursuant to the laws of water districts.

A sewer district generally cannot be created that includes territory in another sewer district. A water district generally cannot be created that includes territory in another water district. However, a sewer district and water district may merge, where either the sewer district includes territory from another water district in part of its boundaries or the water district includes territory from another sewer district in part of its boundaries, but the water systems or sewer systems of the merged district shall not compete with those of the other sewer district or water district.

Vacancies on a sewer district board or water district board, where at least one commissioner remains on the board, are filled by action of the remaining board member or members.

Areas contiguous to a sewer district or water district may annex to the district if a petition requesting such annexation is signed by the owners of at least 60% of the land area.

When two or more sewer districts, or two or more water districts, consolidate, there are no elections for new commissioners until less than three commissioners remain on the board, at which time a new commissioner or commissioners are elected to provide for a three member board.

SUMMARY:

Whenever a county transfers a sewer system or combined sewer and water system to a water district, the water district shall have the authority to operate the sewer system. Whenever a county transfers a water system or a combined water and sewer system to a sewer district, the sewer district shall have the authority to operate the water system.

A water district that includes a county sewer system within part of its boundaries may accept the sewer system from a county. A sewer district that includes a county water system within part of its boundaries may accept a water system from a county.

If a vacancy on a sewer district or water district board remains unfilled for six months, the county legislative authority shall make the necessary appointment or appointments.

Ownerships of most county or state lands are not considered under the 60% ownership petition method of annexation to a sewer or water district. The county and state properties included in such annexations are not subject to the sewer or water districts special assessments, rates or charges, except where service has been requested and provided to the properties.

At each election following the consolidation of two or more sewer districts, or two or more water districts, one commissioner position shall be filled, so that gradually the number of commissioners is reduced to three persons.

Adopt
(Lee

OPR: SL:kt 3-4-85

Proposed Amendments to SHB 1232
By Committee on Local Government

On page 5, line 33, strike "sewer" and insert "water"

On page 5, line 35, strike "sewer" and insert "water"

On page 6, line 1, strike "sewer" and insert "water"

PROPOSED SUBSTITUTE HOUSE BILL 1232

AN ACT Relating to water and sewer districts; and amending RCW 36.94.420, 56.04.070, 56.12.030, 56.24.120, 56.32.070, 57.04.070, 57.12.020, 57.24.070, and 57.32.130.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

Sec. 1. Section 2, chapter 147, Laws of 1984 and RCW 36.94.420 are each amended to read as follows:

If so provided in the transfer agreement, the area served by the system shall, upon completion of the transfer, be deemed annexed to and become a part of the water or sewer district acquiring the system. The county shall provide notice of the hearing by the county legislative authority on the ordinance executing the transfer agreement under RCW 36.94.330 as follows: (1) By mailed notice to all ratepayers served by the system at least fifteen days prior to the hearing; and (2) by notice in a newspaper of general circulation once at least fifteen days prior to the hearing.

In the event of an annexation under this section resulting from the transfer of a system of sewerage or combined water and sewer systems from a county to a water district governed by Title 57 RCW, the water district shall have all the powers of a water district provided by RCW 57.40.150, as if a sewer district had been merged into a water district. In the event of an annexation under this section as a result of the transfer of a system of water or combined water and sewer systems from a county to a sewer district governed by Title 56 RCW, the sewer district shall have all the powers of a sewer district provided by RCW 56.36.060 as if a water district had been merged into the sewer district.

Sec. 2. Section 5, chapter 210, Laws of 1941 as amended by section 3, chapter 45, Laws of 1981 and RCW 56.04.070 are each

amended to read as follows:

Whenever two or more petitions for the formation of a sewer district shall be filed as provided in this chapter, the petition describing the greater area shall supersede all others, and an election shall first be held thereunder, and no lesser sewer district shall ever be created within the limits in whole or in part of any other sewer district, except as provided in RCW 56.36.060 and 36.94.420, as now or hereafter amended.

Sec. 3. Section 3, chapter 210, Laws of 1941 as last amended by section 2, chapter 169, Laws of 1981 and RCW 56.12.030 are each amended to read as follows:

Nominations for the first board of commissioners to be elected at the election for the formation of the sewer district shall be by petition of fifty qualified electors or ten percent of the qualified electors of the district, whichever is the smaller. The petition shall be filed in the auditor's office of the county in which the district is located at least thirty days before the election. Thereafter candidates for the office of sewer commissioner shall file declarations of candidacy and their election shall be conducted as provided by the general elections laws. A vacancy or vacancies shall be filled by appointment by the remaining commissioner or commissioners until the next regular election for commissioners: PROVIDED, That if there are two vacancies on the board, one vacancy shall be filled by appointment by the remaining commissioner and the one remaining vacancy shall be filled by appointment by the then two commissioners and said appointed commissioners shall serve until the next regular election for commissioners((:--~~PROVIDED FURTHER, That~~)). If the vacancy or vacancies remain unfilled within six months of its or their occurrence, the county legislative authority in which the district is located shall make the necessary appointment or appointments. If there is a vacancy of the entire board a new board may be appointed by the board of county commissioners. Any person residing in the district who is at the time of election a qualified voter may vote at any election held in the sewer district.

All expense of elections for the formation or reorganization of a sewer district shall be paid by the county in which the election is

held and the expenditure is hereby declared to be for a county purpose, and the money paid for that purpose shall be repaid to the county by the district if formed or reorganized.

Sec. 4. Section 6, chapter 11, Laws of 1967 ex. sess. and RCW 56.24.120 are each amended to read as follows:

A petition for annexation of an area contiguous to a sewer district may be made in writing, addressed to and filed with the board of commissioners of the district to which annexation is desired. It must be signed by the owners, according to the records of the county auditor, of not less than sixty percent of the area of land for which annexation is petitioned, excluding county and state rights of way, parks, tidelands, lakes, retention ponds, and stream and water courses. Additionally, the petition shall set forth a description of the property according to government legal subdivisions or legal plats, and shall be accompanied by a plat which outlines the boundaries of the property sought to be annexed. Such county and state properties shall be excluded from local improvement districts or utility local improvement districts in the annexed area and from special assessments, rates, or charges of the district except where service has been regulated and provided to such properties. The owners of such property shall be invited to be included within local improvement districts or utility local improvement districts at the time they are proposed for formation.

Sec. 5. Section 8, chapter 197, Laws of 1967 and RCW 56.32.070 are each amended to read as follows:

The sewer commissioners of all sewer districts consolidated into any new consolidated sewer district shall become sewer commissioners thereof until their respective terms of office expire. ((~~When the terms of expiration reduce the total number of remaining sewer commissioners to less than three then the board of commissioners of the consolidated sewer district shall be maintained at the number of three, in accordance with the provisions of RCW 56.42.020 and 56.42.030~~)) At each election of sewer commissioners following the consolidation, only one position shall be filled, so that as the terms of office expire the total number of sewer commissioners in the

consolidated sewer district shall be reduced to three.

Sec. 6. Section 4, chapter 114, Laws of 1929 as amended by section 9, chapter 45, Laws of 1981 and RCW 57.04.070 are each amended to read as follows:

Whenever two or more petitions for the formation of a water district shall be filed as provided in this chapter, the petition describing the greater area shall supersede all others and an election shall first be held thereunder, and no lesser water district shall ever be created within the limits in whole or in part of any water district, except as provided in RCW 57.40.150 and 36.94.420, as now or hereafter amended.

Sec. 7. Section 3, chapter 18, Laws of 1959 as last amended by section 1, chapter 169, Laws of 1981 and RCW 57.12.020 are each amended to read as follows:

Nominations for the first board of commissioners to be elected at the election for the formation of the water district shall be by petition of at least twenty-five percent of the qualified electors of the district, or twenty-five of the qualified electors of the district, whichever is lesser, filed in the auditor's office of the county in which the district is located, at least thirty days prior to the election. Thereafter, candidates for the office of water commissioners shall file declarations of candidacy and their election shall be conducted as provided by the general election laws. A vacancy or vacancies on the board shall be filled by appointment by the remaining commissioner or commissioners until the next regular election for commissioners: PROVIDED, That if there are two vacancies on the board, one vacancy shall be filled by appointment by the remaining commissioner and the one remaining vacancy shall be filled by appointment by the then two commissioners and said appointed commissioners shall serve until the next regular election for commissioners((:--PROVIDED FURTHER, That)). If the vacancy or vacancies remain unfilled within six months of its or their occurrence, the county legislative authority in which the district is located shall make the necessary appointment or appointments. If there is a vacancy of the entire board a new board may be appointed

by the board of county commissioners.

Any person residing in the district who is a qualified voter under the laws of the state may vote at any district election.

Sec. 8. Section 18, chapter 251, Laws of 1953 and RCW 57.24.070 are each amended to read as follows:

A petition for annexation of an area contiguous to a water district may be made in writing, addressed to and filed with the board of commissioners of the district to which annexation is desired. It must be signed by the owners, according to the records of the county auditor, of not less than sixty percent of the area of land for which annexation is petitioned, excluding county and state rights of way, parks, tidelands, lakes, retention ponds, and stream and water courses. Additionally, the petition shall set forth a description of the property according to government legal subdivisions or legal plats, and shall be accompanied by a plat which outlines the boundaries of the property sought to be annexed. Such county and state properties shall be excluded from local improvement districts or utility local improvement districts in the annexed area and from special assessments, rates, or charges of the district except where service has been regulated and provided to such properties. The owners of such property shall be invited to be included within local improvement districts or utility local improvement districts at the time they are proposed for formation.

Sec. 9. Section 13, chapter 267, Laws of 1943 and RCW 57.32.130 are each amended to read as follows:

The water commissioners of all water districts consolidated into any new consolidated water district shall become water commissioners thereof until their respective terms of office expire. ((~~When the terms of expiration reduce the total number of remaining water commissioners to less than three then the board of commissioners of the consolidated water district shall be maintained at the number of three, in accordance with the provisions of RCW 57.12.020 and 57.12.030~~)) At each election of sewer commissioners following the consolidation, only one position shall be filled, so that as the terms of office expire the total number of sewer commissioners in the

consolidated sewer district shall be reduced to three.

HOUSE OF REPRESENTATIVES
STATE OF WASHINGTON

SESSION
COMMITTEE MEETING
AGENDA AND MINUTES

COMMITTEE/SUBCOMMITTEE/JOINT MEETING	DATE	TIME	PAGE
House Local Government Committee	3-5-85	8AM	OF

CHAIRPERSON(S)	MEETING LOCATION
Rep. Haugen, Chair	

COMMITTEE MEMBERS PRESENT	OTHER LEGISLATORS PRESENT
See attached roster.	
	STAFF PRESENT: Lundin/Thompson

ITEM NO.	BRIEF TITLE OR PROPOSED BRIEF TITLE (Staff Contact and Tele. No.)	TAPE NO.	SIDE NO.	METER NO. OR TIME	MEETING TYPE H	W	EX	FOR EACH ITEM ON THE AGENDA, REPORT COMMITTEE ACTION TAKEN, INDIVIDUALS OR GROUPS TESTIFYING AND SUMMARY OF THEIR STATEMENTS, ETC.
	EXECUTIVE SESSION HB 831 - Bond info/publicizing HB 379 - LID laws/revising PUBLIC HEARING HB 24 - Sewer water hook-up interest HB 924 - Port dists/park facilities HB 956 - Federal grants and programs HB 1232 -Water and sewer districts							Rep. Haugen called the meeting to order. HB 24 Steve Lundin, staff counsel, stated that the method by which cities and towns measure connection charges for property owners to connect to city or town water or sewer facilities is re-defined to include interest charges from the date of construction of a facility, along with an equitable share in the original cost of construction of the facility. Chuck Mize, AWC, stated this is a method by which cities and towns can assess late-comer charges. We would propose to add interest charge to the equitable cost. We have been working with the homebuilders to try and draft an amendment to the existing bill which would do three things: 1. Limit the amount of the interest that can be charged. (Not to exceed 10%). 2. Place a cap on the number of years that could be charged. (Not to exceed 10 years.) 3. Specific language that aggregate amount of interest could not exceed actual cost of their equitable share. In this particular instance, no one has paid. These would be new lines. Rep. Doty noted that some of the members may be confused by a connection fee and the cost of recovery charges. The monthly payment has nothing to do with it.

FORM REP-2 (1/79)

HOUSE OF REPRESENTATIVES
STATE OF WASHINGTON

DATE	TIME	COMMITTEE/SUBCOMMITTEE/JOINT MEETING	PAGE OF

ITEM NO.	BRIEF TITLE OR PROPOSED BRIEF TITLE (Staff Contact and Tele. No.)	TAPE NO.	SIDE NO.	METER NO. OR TIME	MEETING TYPE H	W	EX	FOR EACH ITEM ON THE AGENDA, REPORT COMMITTEE ACTION TAKEN, INDIVIDUALS OR GROUPS TESTIFYING AND SUMMARY OF THEIR STATEMENTS, ETC.

HB 924

Steve Lundin, staff counsel, summarized the bill. Port districts would be authorized to provide funds to another public entity for the provision of parks, and park and recreation facilities and services.

Rep. Valle , prime sponsor, said she believed this was one of the more simple bills to come before this committee. The bill essentially refers to the North SeaTac Park in an effort to give a gentle nudge to the port of Seattle to cooperate.

Raleigh Burr, President, Highline Community Council and active on the parks board appeared before the committee to encourage legislation which would enable port to provide funds for a park. He said it appears the port's attitude is that they are in the business of operating an airport and not there to build a park. They need to look at the overall picture and planning of the community. The airport has purchased over 1,000 homes in this area and in the process of removing those homes. However, when those homes are moved out it has serious consequences on the roads, fire, law enforcement and utility services. The port, simply logically, ethically and morally must be responsible for its enhancement. There is also an extremely high crime rate near the airport and the utility districts are seriously affected Community organizations have moved into this void. The community plan originally called for this to be used as a park and open space land. The county has attempted to build a park, but lack of funds. The property tax that now goes out of that district is over $1 million a year.

Rep. Zellinsky said that he has problems with visualizing a park there. A park is supposed to be quiet and peaceful. What if a plane had to cut its landing short. Would you want your kids playing there?

FORM REP-2 (1/79) (REVERSE)

☐ CONTINUED ON NEXT PAGE

Rep. Isaacson noted that most of the growth related to that area is caused by commercial growth and not from expansion of the airport.

Mr. Burr said that it was his understanding that the ports would build such facilities if it would directly impact their facilities. But what he was urging support for is that they have to look past making money and look at the socio-economic pressures.

Lew Holcomb, Wash. Assn. Public Ports, said they saw this bill as more than just a "gentle nudge". This bill would affect 32 of the 39 counties in the state. This would expand the authority of port districts. He noted this was not a public ports sponsored bill. He noted that there are county parks, city parks and the park and recreation facilities. So why do they need the ports to operate a park. Is it because none of the other groups will fund it? The ports already have the authority to provide such facilities within strict limitations. It appears that if the legislature wants to liberalize port authority it should amend the bill that any park and recreation facility that the ports provide meets the criteria. This bill considerably broadens our authority. If you do pass the bill he suggested a title amendment and to state "in total". He said that they have attempted to be good neighbors. They have just spent millions to address the noise problems.

HB 956

Steve Lundin, staff counsel, explained the bill. The statutory law authorizing counties, cities and towns to create public corporations to expend federal grants or carry out federal programs is altered to authorize counties, cities and towns to create public corporations to carry out programs in general.

Rep. Locke, Prime Sponsor, stated that in 1974 when they created the public corporations it was stated that a public corporation had to be formed to expend the money. With the diminishing of federal funds and federal programs there is a question for the need. Pacific Medical Center would like to issue bonds but attorneys are saying clear language is needed. The proposed amendment is needed to make clearthat public funds can be used for public purposes.

Rep. Allen expressed concern over another power supply system. Rep. Locke responded by saying that you have problems where the participant isn't the owner/operator of the facility, but public corporations own their own facilities and the city or county control.

Chuck Goldmark, Seattle attorney, stated that regarding bonds, public authorities are barred from pledging public credit. He said the federal government is no longer a realistic source of revenues for these public corporations. The legislation authorizing the creation of public corporations has been interpreted by some attorneys as requiring the use of federal funds or a substantial nexus with a federal program in order to be able to legally function. Public corporations have been widely used in Seattle and Tacoma and serve a valuable purpose. Since the federal dollar source and federal programs are drying up, it is suggested that the statute authorizing the creation of these public corporations be amended to remove any doubt as to the ability of the public corporation to function without an infusion of federal dollars. Theyclarifying existing law in specifying that public cororations may issue "bonds" as a means of borrowing money. Since public corporations have no taxing powers, the only bonds they can issue would be revenue bonds.

Examples of public corporations include: Pacific Medical Center; 4 housing renovation programs in Seattle; Pantageious Theatre in Tacoma; Everett renovation program in downtown; and Pike Place Market.

The debt is not chargeable to the city. These entities do not exercise any police powers.

Doug Baker, city planner of Aberdeen, also testified in support of the bill. In Aberdeen the interest is in trying to renovate the downtown area. Currently, any city under 50,000 population has to apply to community development to get funds. Another source of income would be through the urban development action grant payback. What HB 956 does it to clarify that we could issue revenue bonds, not G.O. bonds.

This bill would be very helpful to us.

HB 1232

Steve Lundin, staff counsel, explained the substitute bill. Whenever a county transfers a sewer system or combined sewer and water system to a water district, the water district shall have the authority to operate the sewer system. And, whenever a county transfers a water system or a combined water and sewer system to a sewer district, the sewer district shall have the authority to operate the water system. The proposed bill also addressed vacancies.

Steve Gano, Executive Director of Wash. Sewer Districts Association, said the purpose of this bill was to clarify overlapping jurisdictions and to address problems during jurisdiction - dropping out of commissioners. It also addresses the case where if a commissioner resigns. There is currently no provision if the two commissioners can't agree. This establishes a process. It also addresses annexation laws. It gives the county first right of refusal.

EXECUTIVE SESSION

HB 831

The amendment proposed by Rep. Winsley on page 2, line 4 was adopted.

Rep. Isaacson offered an amendment on page 2, after line 12 to insert a new section. Rep. Isaacson stated that if we just record info on new bonds it could take as long as 30 years to get all the needed information. Amendment adopted.

Motion to change "fiscal agent" to "fiscal agency". Motion adopted.
On page 1, line 23, would amend to say that failure to file would not invalidate the bonds. Amendments adopted.

Rep. Ebersole agreed with Rep. Isaacson regarding the failure to report the information. Mr. Lundin noted that it would be reflected in the state auditors report.

Rep. Winsley made a motion to delete IRB's. Motion adopted.(Page 2, line 11)
On page 2, line 17, require DED to report the bond issue only once a year instead of 3 months. Amendment adopted.

Rep. Isaacson made a motion on page 1, lines 16 and 20 to insert (5). Motion adopted. Moved all amendments into substitute bill.

Bill moved out DPS 15 ayes.

HB 379 - EXECUTIVE SESSION

Steve Lundin, staff counsel, explained the new substitute bill. He explained that the bill added museums and cultural or arts facilities. Section 3 grants local governments more flexibility to measure special assessments. Section 4 strikes the proviso and adds ability to create separate reserve fund out of special assessments. Sections 5, 6, 7 and 8 are substantially identical to existing law. It creates a new chapter of law and sets out definitions.

Rep. Hine urged passage of the substitute bill. She said this is local legislative authority and is not metro authority. Steve Lundin clarified that metro could use this but so could the city and this would not expand metros powers.

Bill moved out 15 ayes DPS.

Meeting adjourned.

HB 1232 - Water + Sewer Dists

COMMITTEE House Local Govt
DATE 3-5-85

PUBLIC ATTENDANCE ROSTER

NAME	ORGANIZATION	MAILING ADDRESS	PHONE	BILL OR SUBJECT OF INTEREST	WISH TO TESTIFY? (YES/NO)	IF SO, PRO/CON
PLEASE PRINT STEVE GANO	Assoc Of Sewer Dists	STREET CITY Oly ZIP	754-3290		YES	Pro
PLEASE PRINT		STREET CITY ZIP				
PLEASE PRINT		STREET CITY ZIP				
PLEASE PRINT		STREET CITY ZIP				
PLEASE PRINT		STREET CITY ZIP				
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PLEASE PRINT		STREET CITY ZIP				
PLEASE PRINT		STREET CITY ZIP				

SENATE BILL REPORT

SHB 1232

BY House Committee on Local Government (originally sponsored by Representatives Haugen and May)

Changing provisions relating to sewer and water district annexations.

House Committee on Local Government

Senate Committee on Governmental Operations

Senate Hearing Date(s): April 4, 1985

Majority Report: Do pass.
Signed by Senators Thompson, Chairman; Bailey, DeJarmatt, Garrett, Rinehart, Saling.

Senate Staff: Louise Nash (786-7409)
April 5, 1985

AS REPORTED BY COMMITTEE ON GOVERNMENTAL OPERATIONS, APRIL 4, 1985

BACKGROUND:

Counties are authorized to operate sewer systems, water systems, or combined water and sewer systems. Counties are authorized to transfer such systems to sewer or water districts. Such a transfer is deemed to constitute an annexation of the area served by the sewer or water system to the sewer or water district.

Water districts can operate sewer systems pursuant to the laws of sewer districts. Sewer districts can operate water systems pursuant to the laws of water districts.

A sewer district generally cannot be created that includes territory in another sewer district. A water district generally cannot be created that includes territory in another water district. However, a sewer district and water district may merge, where either the sewer district includes territory from another water district in part of its boundaries or the water district includes territory from another sewer district in part of its boundaries, but the water systems or sewer systems of the merged district shall not compete with those of the other sewer district or water district.

Vacancies on a sewer district board or water district board, where at least one commissioner remains on the board, are filled by action of the remaining board member or members.

Areas contiguous to a sewer district or water district may annex to the district if a petition requesting such annexation is signed by the owners of at least 60 percent of the land area.

When two or more sewer districts, or two or more water districts, consolidate, there are no elections for new commissioners until less than three commissioners remain on the board, at which time a new commissioner or commissioners are elected to provide for a three member board.

SUMMARY:

Whenever a county transfers a sewer system or combined sewer and water system to a water district, the water district shall have the authority to operate the sewer system. Whenever a county transfers a water system or a combined water and sewer system to a sewer district, the sewer district shall have the authority to operate the water system.

A water district that includes a county sewer system within part of its boundaries may accept the sewer system from a county. A sewer district that includes a county water system within part of its boundaries may accept a water system from a county.

If a vacancy on a sewer district or water district board remains unfilled for six months, the county legislative authority shall make the necessary appointment or appointments.

Ownerships of most county or state lands are not considered under the 60 percent ownership petition method of annexation to a sewer or water district. The county and state properties included in such annexations are not subject to the sewer or water districts special assessments, rates or charges, except where service has been requested and provided to the properties.

At the initial elections following the consolidation of two or more sewer districts, or two or more water districts, one commissioner position shall be filled, so that gradually the number of commissioners is reduced to three persons.

Fiscal Note: none requested

Senate Committee - Testified: Steve Gano, Washington Association of Sewer Districts

Appropriation: / /
Revenue: _____
Fiscal Note: N/A

HOUSE BILL REPORT

HB 1232

BY Representative Haugen

Relating to water and sewer districts.

House Committee on Local Government

House Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. (15)
SIGNED BY Representatives Haugen, Chair; Nutley, Vice CHair; Allen, Bristow, Brough, Doty, Ebersole, Hine, Isaacson, May, Patrick, Rayburn, Smitherman, Winsley and Zellinsky.

House Minority Report:
SIGNED BY

House Staff: Steve Lundin (786-7127)

As Reported by Committee on Local Government March 8, 1985

BACKGROUND: Counties are authorized to operate sewer systems, water systems, or combined water and sewer systems. Counties are authorized to transfer such systems to sewer or water districts. Such a transfer is deemed to constitute an annexation of the area served by the sewer or water system to the sewer or water district.

Water districts can operate sewer systems pursuant to the laws of sewer districts. Sewer districts can operate water systems pursuant to the laws of water districts.

A sewer district generally cannot be created that includes territory in another sewer district. A water district generally cannot be created that includes territory in another water district. However, a sewer district and water district may merge, where either the sewer district includes territory from another water district in part of its boundaries or the water district includes territory from another sewer district in part of its boundaries, but the water systems or sewer systems of the merged district shall not compete with those of the other sewer district or water district.

Vacancies on a sewer district board or water district board, where at least one commissioner remains on the board, are filled by action of the remaining board member or members.

Areas contiguous to a sewer district or water district may annex to the district if a petition requesting such annexation is signed by the owners of at least 60 percent of the land area.

When two or more sewer districts, or two or more water districts, consolidate, there are no elections for new commissioners until less than three commissioners remain on the board, at which time a new commissioner or commissioners are elected to provide for a three member board.

SUMMARY: SUBSTITUTE BILL: Whenever a county transfers a sewer system or combined sewer and water system to a water district, the water district shall have the authority to operate the sewer system. Whenever a county transfers a water system or a combined water and sewer system to a sewer district, the sewer district shall have the authority to operate the water system.

A water district that includes a county sewer system within part of its boundaries may accept the sewer system from a county. A sewer district that includes a county water system within part of its boundaries may accept a water system from a county.

If a vacancy on a sewer district or water district board remains unfilled for six months, the county legislative authority shall make the necessary appointment or appointments.

Ownerships of most county or state lands are not considered under the 60 percent ownership petition method of annexation to a sewer or water district. The county and state properties included in such annexations are not subject to the sewer or water districts special assessments, rates or charges, except where service has been requested and provided to the properties.

At the initial elections following the consolidation of two or more sewer districts, or two or more water districts, one commissioner position shall be filled, so that gradually the number of commissioners is reduced to three persons.

SUBSTITUTE BILL COMPARED TO ORIGINAL: Technical changes, correcting the term "sewer" district made in water district statutes to "water" district.

Appropriation:

Revenue:

Fiscal Note: Not Requested.

Effective Date:

HOUSE COMMITTEE - Testified For: Steve Gano, Wash. Assn. Sewer Districts.

HOUSE COMMITTEE - Testified Against: None Presented.

HOUSE COMMITTEE - Testimony For: (1) This clarifies existing law. (2) This gives sewer and water districts the needed authority to operate the water and sewer facilities a county may transfer to them.

HOUSE COMMITTEE - Testimony Against: None Presented.

HOUSE OF REPRESENTATIVES

Olympia, Wash.

ROLL CALL VOTE

BILL NO. HB 1232

DATE: 3-8-85

Committee on HOUSE LOCAL GOVERNMENT (15)

VOTING ON: Final Passage DPS
(DP, DPA, DPS, DP2S)

MEMBER	AYE	NAY	ABSENT = A EXCUSED = E	NOT VOTING	CHANGE VOTE
HAUGEN Chair	✓				
NUTLEY Vice Chair	✓				
ALLEN	✓				
BRISTOW	✓				
BROUGH	✓				
DOTY	✓				
EBERSOLE	✓				
HINE	✓				
ISAACSON	✓				
MAY	✓				
PATRICK	✓				
RAYBURN	✓				
SMITHERMAN			E		
WINSLEY	✓				
ZELLINSKY	✓				
TOTAL	14	0	1		
Change Vote	0	0			
TOTAL	14	0			

Rep B 106

Report of Standing Committee

HOUSE OF REPRESENTATIVES
Olympia, Washington

March 8, 1985
(date)

HOUSE BILL No. 1232
(Type in House or Senate Bill, Resolution, or Memorial)

Prime Sponsor Representative Haugen

Relating to water and sewer districts.
(Type in brief title exactly as it appears on back cover of original bill)

reported by Committee on LOCAL GOVERNMENT (15)

☐ *MAJORITY recommendation: Do Pass.*

☒ *MAJORITY recommendation: The substitute bill be substituted therefor and the substitute bill do pass.*

☐ *MAJORITY recommendation: Do pass with the following amendment(s):*

Signed by Representatives (15)

Mary Margaret Haugen — *Chair*
HAUGEN

Bruce Nutley — *Vice Chair*
NUTLEY

Katherine Allen
ALLEN

Jim Bristow
BRISTOW

Jean Marie Brough
BROUGH

Shirley Doty
DOTY

Ebersole
EBERSOLE

Lorraine Hine
HINE

Ray Isaacson
ISAACSON

Fred O. May
MAY

Michael E. Patrick
PATRICK

Margaret Rayburn
RAYBURN

Brad Smitherman
SMITHERMAN

Shirley Winsley
WINSLEY

Art Zellinsky
ZELLINSKY

ATTACHMENT: Committee Roll Call Vote

☐ Check here if Minority Report Requested (see back)

Rep D -106-

SUBSTITUTE HOUSE BILL NO. 1232

by Committee on Local Government (originally sponsored by Representatives Haugen and May)

Changing provisions relating to sewer and water district annexations.

LEGISLATIVE ACTION	HOUSE (Fl #)	SENATE (Fl #)
Filed // Received		
Introduced / Read 1st time		
Referred/Rereferred to COMMITTEE on:		
Reported w/MAJORITY recommendation		
w/MINORITY recommendation		
RULES 2	☐	☐
Rules suspended/Adv to 2nd Rdg.	☐	☐
Read 2nd time		
SUBSTITUTED // AMENDED // HELD	☐S ☐A ☐H	☐A ☐H
RULES 3	☐	☐
Rules suspended / adv to 3rd Rdg.	☐	☐
Read 3rd time // Held	☐3 ☐H	☐3 ☐H
PASSED / FAILED YEAS-NAYS	☐P ☐F	☐P ☐F
Notice of reconsideration given	☐	☐
Vote on reconsideration/Passed/Failed	☐P ☐F	☐P ☐F
Title Agreed to	☐	☐
CHIEF CLERK // SECRETARY OF SENATE	DENNIS L. HECK	SID SNYDER
Received // Returned		
DO NOT CONCUR // DO CONCUR	☐DNC ☐DC	
DO CONCUR w/exception	☐DC w/e	
Insist / Recede		☐I ☐R
Recede w/exception		☐R ☐R w/e
PASSED / FAILED YEAS-NAYS	☐P ☐F	☐P ☐F
Date of Action		
As Senate Amended // w/o Sen. Amd	☐A ☐w/o	☐A ☐w/o
CHIEF CLERK // SECRETARY OF SENATE	DENNIS L. HECK	SID SNYDER
Enrolled/Signed by Speaker of House		
Signed by President of Senate		
Delivered to Governor		
EXECUTIVE ACTION:	Governor Signed:	Veto ☐ Partial Veto ☐
Filed w/Secretary of the State		
Action Taken Regarding Veto/Partial Veto		

consolidated sewer district shall be reduced to three.

Sec. 6. Section 4, chapter 114, Laws of 1929 as amended by section 9, chapter 45, Laws of 1981 and RCW 57.04.070 are each amended to read as follows:

Whenever two or more petitions for the formation of a water district shall be filed as provided in this chapter, the petition describing the greater area shall supersede all others and an election shall first be held thereunder, and no lesser water district shall ever be created within the limits in whole or in part of any water district, except as provided in RCW 57.40.150 and 36.94.420, as now or hereafter amended.

Sec. 7. Section 3, chapter 18, Laws of 1959 as last amended by section 1, chapter 169, Laws of 1981 and RCW 57.12.020 are each amended to read as follows:

Nominations for the first board of commissioners to be elected at the election for the formation of the water district shall be by petition of at least twenty-five percent of the qualified electors of the district, or twenty-five of the qualified electors of the district, whichever is lesser, filed in the auditor's office of the county in which the district is located, at least thirty days prior to the election. Thereafter, candidates for the office of water commissioners shall file declarations of candidacy and their election shall be conducted as provided by the general election laws. A vacancy or vacancies on the board shall be filed by appointment by the remaining commissioner or commissioners until the next regular election for commissioners: PROVIDED, That if there are two vacancies on the board, one vacancy shall be filed by appointment by the remaining commissioner and the one remaining vacancy shall be filled by appointment by the then two commissioners and said appointed commissioners shall serve until the next regular election for commissioners((:--~~PROVIDED FURTHER, That~~)). If the vacancy or vacancies remain unfilled within six months of its or their occurrence, the county legislative authority in which the district is located shall make the necessary appointment or appointments. If there is a vacancy of the entire board a new board may be appointed

by the board of county commissioners.

Any person residing in the district who is a qualified voter under the laws of the state may vote at any district election.

Sec. 8. Section 18, chapter 251, Laws of 1953 and RCW 57.24.070 are each amended to read as follows:

A petition for annexation of an area contiguous to a water district may be made in writing, addressed to and filed with the board of commissioners of the district to which annexation is desired. It must be signed by the owners, according to the records of the county auditor, of not less than sixty percent of the area of land for which annexation is petitioned, excluding county and state rights of way, parks, tidelands, lakes, retention ponds, and stream and water courses. Additionally, the petition shall set forth a description of the property according to government legal subdivisions or legal plats, and shall be accompanied by a plat which outlines the boundaries of the property sought to be annexed. Such county and state properties shall be excluded from local improvement districts or utility local improvement districts in the annexed area and from special assessments, rates, or charges of the district except where service has been regulated and provided to such properties. The owners of such property shall be invited to be included within local improvement districts or utility local improvement districts at the time they are proposed for formation.

Sec. 9. Section 13, chapter 267, Laws of 1943 and RCW 57.32.130 are each amended to read as follows:

The water commissioners of all water districts consolidated into any new consolidated water district shall become water commissioners thereof until their respective terms of office expire. ((~~When the terms of expiration reduce the total number of remaining water commissioners to less than three then the board of commissioners of the consolidated water district shall be maintained at the number of three, in accordance with the provisions of RCW 57.12.020 and 57.12.030~~)) At each election of water commissioners following the consolidation, only one position shall be filled, so that as the terms of office expire the total number of water commissioners in the

consolidated water district shall be reduced to three. 187

Adopted
Exec
3-8-85

OPR: SL:kt 3-4-85

Proposed Amendments to SHB 1232
By Committee on Local Government

On page 5, line 33, strike "sewer" and insert "water"

On page 5, line 35, strike "sewer" and insert "water"

On page 6, line 1, strike "sewer" and insert "water"

Adopted Ex

PROPOSED SUBSTITUTE HOUSE BILL 1232

AN ACT Relating to water and sewer districts; and amending RCW 36.94.420, 56.04.070, 56.12.030, 56.24.120, 56.32.070, 57.04.070, 57.12.020, 57.24.070, and 57.32.130. CR85B F H -2016

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

Sec. 1. Section 2, chapter 147, Laws of 1984 and RCW 36.94.420 are each amended to read as follows: ;1 PARTA

If so provided in the transfer agreement, the area served by the system shall, upon completion of the transfer, be deemed annexed to and become a part of the water or sewer district acquiring the system. The county shall provide notice of the hearing by the county legislative authority on the ordinance executing the transfer agreement under RCW 36.94.330 as follows: (1) By mailed notice to all ratepayers served by the system at least fifteen days prior to the hearing; and (2) by notice in a newspaper of general circulation once at least fifteen days prior to the hearing. ;3 18 19 20 21 22 22 23 24

In the event of an annexation under this section resulting from the transfer of a system of sewerage or combined water and sewer systems from a county to a water district governed by Title 57 RCW, the water district shall have all the powers of a water district provided by RCW 57.40.150, as if a sewer district had been merged into a water district. In the event of an annexation under this section as a result of the transfer of a system of water or combined water and sewer systems from a county to a sewer district governed by Title 56 RCW, the sewer district shall have all the powers of a sewer district provided by RCW 56.36.060 as if a water district had been merged into the sewer district. 25 27 28 28 29 30 31 31 32 33 33

Sec. 2. Section 5, chapter 210, Laws of 1941 as amended by section 3, chapter 45, Laws of 1981 and RCW 56.04.070 are each 35 38

amended to read as follows:

Whenever two or more petitions for the formation of a sewer district shall be filed as provided in this chapter, the petition describing the greater area shall supersede all others, and an election shall first be held thereunder, and no lesser sewer district shall ever be created within the limits in whole or in part of any other sewer district, except as provided in RCW 56.36.060 and 36.94.420, as now or hereafter amended.

Sec. 3. Section 8, chapter 210, Laws of 1941 as last amended by section 2, chapter 169, Laws of 1981 and RCW 56.12.030 are each amended to read as follows:

Nominations for the first board of commissioners to be elected at the election for the formation of the sewer district shall be by petition of fifty qualified electors or ten percent of the qualified electors of the district, whichever is the smaller. The petition shall be filed in the auditor's office of the county in which the district is located at least thirty days before the election. Thereafter candidates for the office of sewer commissioner shall file declarations of candidacy and their election shall be conducted as provided by the general elections laws. A vacancy or vacancies shall be filled by appointment by the remaining commissioner or commissioners until the next regular election for commissioners: PROVIDED, That if there are two vacancies on the board, one vacancy shall be filled by appointment by the remaining commissioner and the one remaining vacancy shall be filled by appointment by the then two commissioners and said appointed commissioners shall serve until the next regular election for commissioners((:--~~PROVIDED FURTHER, That~~)). If the vacancy or vacancies remain unfilled within six months of its or their occurrence, the county legislative authority in which the district is located shall make the necessary appointment or appointments. If there is a vacancy of the entire board a new board may be appointed by the board of county commissioners. Any person residing in the district who is at the time of election a qualified voter may vote at any election held in the sewer district.

All expense of elections for the formation or reorganization of a sewer district shall be paid by the county in which the election is

held and the expenditure is hereby declared to be for a county purpose, and the money paid for that purpose shall be repaid to the county by the district if formed or reorganized.

Sec. 4. Section 6, chapter 11, Laws of 1967 ex. sess. and RCW 56.24.120 are each amended to read as follows:

A petition for annexation of an area contiguous to a sewer district may be made in writing, addressed to and filed with the board of commissioners of the district to which annexation is desired. It must be signed by the owners, according to the records of the county auditor, of not less than sixty percent of the area of land for which annexation is petitioned, excluding county and state rights of way, parks, tidelands, lakes, retention ponds, and stream and water courses. Additionally, the petition shall set forth a description of the property according to government legal subdivisions or legal plats, and shall be accompanied by a plat which outlines the boundaries of the property sought to be annexed. Such county and state properties shall be excluded from local improvement districts or utility local improvement districts in the annexed area and from special assessments, rates, or charges of the district except where service has been regulated and provided to such properties. The owners of such property shall be invited to be included within local improvement districts or utility local improvement districts at the time they are proposed for formation.

Sec. 5. Section 8, chapter 197, Laws of 1967 and RCW 56.32.070 are each amended to read as follows:

The sewer commissioners of all sewer districts consolidated into any new consolidated sewer district shall become sewer commissioners thereof until their respective terms of office expire. ((~~When the terms of expiration reduce the total number of remaining sewer commissioners to less than three then the board of commissioners of the consolidated sewer district shall be maintained at the number of three, in accordance with the provisions of RCW 56.12.020 and 56.12.030~~)) At each election of sewer commissioners following the consolidation, only one position shall be filled, so that as the terms of office expire the total number of sewer commissioners in the

consolidated sewer district shall be reduced to three.

Sec. 6. Section 4, chapter 114, Laws of 1929 as amended by section 9, chapter 45, Laws of 1981 and RCW 57.04.070 are each amended to read as follows:

Whenever two or more petitions for the formation of a water district shall be filed as provided in this chapter, the petition describing the greater area shall supersede all others and an election shall first be held thereunder, and no lesser water district shall ever be created within the limits in whole or in part of any water district, except as provided in RCW 57.40.150 and 36.94.420, as now or hereafter amended.

Sec. 7. Section 3, chapter 18, Laws of 1959 as last amended by section 1, chapter 169, Laws of 1981 and RCW 57.12.020 are each amended to read as follows:

Nominations for the first board of commissioners to be elected at the election for the formation of the water district shall be by petition of at least twenty-five percent of the qualified electors of the district, or twenty-five of the qualified electors of the district, whichever is lesser, filed in the auditor's office of the county in which the district is located, at least thirty days prior to the election. Thereafter, candidates for the office of water commissioners shall file declarations of candidacy and their election shall be conducted as provided by the general election laws. A vacancy or vacancies on the board shall be filed by appointment by the remaining commissioner or commissioners until the next regular election for commissioners: PROVIDED, That if there are two vacancies on the board, one vacancy shall be filed by appointment by the remaining commissioner and the one remaining vacancy shall be filled by appointment by the then two commissioners and said appointed commissioners shall serve until the next regular election for commissioners((:--~~PROVIDED FURTHER, That~~)). If the vacancy or vacancies remain unfilled within six months of its or their occurrence, the county legislative authority in which the district is located shall make the necessary appointment or appointments. If there is a vacancy of the entire board a new board may be appointed

by the board of county commissioners.

Any person residing in the district who is a qualified voter under the laws of the state may vote at any district election.

Sec. 8. Section 18, chapter 251, Laws of 1953 and RCW 57.24.070 are each amended to read as follows:

A petition for annexation of an area contiguous to a water district may be made in writing, addressed to and filed with the board of commissioners of the district to which annexation is desired. It must be signed by the owners, according to the records of the county auditor, of not less than sixty percent of the area of land for which annexation is petitioned, excluding county and state rights of way, parks, tidelands, lakes, retention ponds, and stream and water courses. Additionally, the petition shall set forth a description of the property according to government legal subdivisions or legal plats, and shall be accompanied by a plat which outlines the boundaries of the property sought to be annexed. Such county and state properties shall be excluded from local improvement districts or utility local improvement districts in the annexed area and from special assessments, rates, or charges of the district except where service has been regulated and provided to such properties. The owners of such property shall be invited to be included within local improvement districts or utility local improvement districts at the time they are proposed for formation.

Sec. 9. Section 13, chapter 267, Laws of 1943 and RCW 57.32.130 are each amended to read as follows:

The water commissioners of all water districts consolidated into any new consolidated water district shall become water commissioners thereof until their respective terms of office expire. ((~~When the terms of expiration reduce the total number of remaining water commissioners to less than three then the board of commissioners of the consolidated water district shall be maintained at the number of three, in accordance with the provisions of RCW 57.12.020 and 57.12.030~~)) At each election of sewer commissioners following the consolidation, only one position shall be filled, so that as the terms of office expire the total number of sewer commissioners in the

consolidated sewer district shall be reduced to three. 187

HB 1232

HOUSE OF REPRESENTATIVES

Olympia, Washington

BILL ANALYSIS

Bill No. HB 1232

Comp. Meas. _____

Relating to water and sewer districts
Brief Title

Status In Comm

Date 3-3-85

Rep. Haugen
Sponsor

Staff Contact Lundin

Committee on HLG

BACKGROUND:

SUMMARY: HB 1232 is a title only bill.

PROPOSED SUBSTITUTE HOUSE BILL 1232

BACKGROUND:

Counties are authorized to operate sewer systems, water systems, or combined water and sewer systems. Counties are authorized to transfer such systems to sewer or water district. Such a transfer is deemed to constitute an annexation of the area served by the sewer or water system to the sewer or water district.

Water districts can operate sewer systems pursuant to the laws of sewer districts. Sewer districts can operate water systems pursuant to the laws of water districts.

A sewer district generally cannot be created that includes territory in another sewer district. A water district generally cannot be created that includes territory in another water district. However, a sewer district and water district may merge, where either the sewer district includes territory from another water district in part of its boundaries or the water district includes territory from another sewer district in part of its boundaries, but the water systems or sewer systems of the merged district shall not compete with those of the other sewer district or water district.

Vacancies on a sewer district board or water district board, where at least one commissioner remains on the board, are filled by action of the remaining board member or members.

Areas contiguous to a sewer district or water district may annex to the district if a petition requesting such annexation is signed by the owners of at least 60% of the land area.

When two or more sewer districts, or two or more water districts, consolidate, there are no elections for new commissioners until less than three commissioners remain on the board, at which time a new commissioner or commissioners are elected to provide for a three member board.

SUMMARY:

Whenever a county transfers a sewer system or combined sewer and water system to a water district, the water district shall have the authority to operate the sewer system. Whenever a county transfers a water system or a combined water and sewer system to a sewer district, the sewer district shall have the authority to operate the water system.

A water district that includes a county sewer system within part of its boundaries may accept the sewer system from a county. A sewer district that includes a county water system within part of its boundaries may accept a water system from a county.

If a vacancy on a sewer district or water district board remains unfilled for six months, the county legislative authority shall make the necessary appointment or appointments.

Ownerships of most county or state lands are not considered under the 60% ownership petition method of annexation to a sewer or water district. The county and state properties included in such annexations are not subject to the sewer or water districts special assessments, rates or charges, except where service has been requested and provided to the properties.

At each election following the consolidation of two or more sewer districts, or two or more water districts, one commissioner position shall be filled, so that gradually the number of commissioners is reduced to three persons.

HOUSE BILL NO. 1232

by Representative Haugen

Relating to water and sewer districts.

2-7-85
2-8-85

Rules to L.C.
2/25

AN ACT Relating to water and sewer districts. CR85B

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON: F

NEW SECTION. Sec. 1. This act shall be known as the water and H
sewer districts act of 1985. -1185

HB 1232

HOUSE OF REPRESENTATIVES

Olympia, Washington

BILL ANALYSIS

Bill No. S HB 1232

Comp. Meas. _____

Relating to water and sewer districts
Brief Title

Status In Comm

Date 3-3-85

Rep. Haugen
Sponsor

Staff Contact Lundin

Committee on HLG

BACKGROUND:

SUMMARY: HB 1232 is a title only bill.

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SUMMARY:

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At each election following the consolidation of two or more sewer districts, or two or more water districts, one commissioner position shall be filled, so that gradually the number of commissioners is reduced to three persons.

Changes - Technical changes, correcting the term "sewer" district made in water district statutes to "water" district.

Reasons for 1) This clarifies existing law
2) This gives Sewer and water districts the authority to operate the water and sewer facilities a county transfers to them

Opponents - none

People in favor - Same

Proponents - none

APPENDIX G

SENATE BILL REPORT

SHB 1232

BY House Committee on Local Government (originally sponsored by Representatives Haugen and May)

Changing provisions relating to sewer and water district annexations.

House Committee on Local Government

Senate Committee on Governmental Operations

Senate Hearing Date(s): April 4, 1985

Majority Report: Do pass.
Signed by Senators Thompson, Chairman; Bailey, DeJarnatt, Garrett, Rinehart, Saling.

Senate Staff: Louise Nash (786-7409)
April 5, 1985

AS REPORTED BY COMMITTEE ON GOVERNMENTAL OPERATIONS, APRIL 4, 1985

BACKGROUND:

Counties are authorized to operate sewer systems, water systems, or combined water and sewer systems. Counties are authorized to transfer such systems to sewer or water districts. Such a transfer is deemed to constitute an annexation of the area served by the sewer or water system to the sewer or water district.

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When two or more sewer districts, or two or more water districts, consolidate, there are no elections for new commissioners until less than three commissioners remain on the board, at which time a new commissioner or commissioners are elected to provide for a three member board.

SUMMARY:

Whenever a county transfers a sewer system or combined sewer and water system to a water district, the water district shall have the authority to operate the sewer system. Whenever a county transfers a water system or a combined water and sewer system to a sewer district, the sewer district shall have the authority to operate the water system.

A water district that includes a county sewer system within part of its boundaries may accept the sewer system from a county. A sewer district that includes a county water system within part of its boundaries may accept a water system from a county.

If a vacancy on a sewer district or water district board remains unfilled for six months, the county legislative authority shall make the necessary appointment or appointments.

Ownerships of most county or state lands are not considered under the 60 percent ownership petition method of annexation to a sewer or water district. The county and state properties included in such annexations are not subject to the sewer or water districts special assessments, rates or charges, except where service has been requested and provided to the properties.

At the initial elections following the consolidation of two or more sewer districts, or two or more water districts, one commissioner position shall be filled, so that gradually the number of commissioners is reduced to three persons.

Fiscal Note: none requested

Senate Committee - Testified: Steve Gano, Washington Association of Sewer Districts

SENATE BILL REPORT

SHB 1232

BY House Committee on Local Government (originally sponsored by Representatives Haugen and May)

Changing provisions relating to sewer and water district annexations.

House Committee on Local Government

Senate Committee on Governmental Operations

Senate Hearing Date(s):

Senate Staff: Louise Nash (786-7409)

AS OF APRIL 1, 1985

BACKGROUND:

Counties are authorized to operate sewer systems, water systems, or combined water and sewer systems. Counties are authorized to transfer such systems to sewer or water districts. Such a transfer is deemed to constitute an annexation of the area served by the sewer or water system to the sewer or water district.

Water districts can operate sewer systems pursuant to the laws of sewer districts. Sewer districts can operate water systems pursuant to the laws of water districts.

A sewer district generally cannot be created that includes territory in another sewer district. A water district generally cannot be created that includes territory in another water district. However, a sewer district and water district may merge, where either the sewer district includes territory from another water district in part of its boundaries or the water district includes territory from another sewer district in part of its boundaries, but the water systems or sewer systems of the merged district shall not compete with those of the other sewer district or water district.

Vacancies on a sewer district board or water district board, where at least one commissioner remains on the board, are filled by action of the remaining board member or members.

Areas contiguous to a sewer district or water district may annex to the district if a petition requesting such annexation is signed by the owners of at least 60 percent of the land area.

When two or more sewer districts, or two or more water districts, consolidate, there are no elections for new commissioners until less than three commissioners remain on the board, at which time a new commissioner or commissioners are elected to provide for a three member board.

SUMMARY:

Whenever a county transfers a sewer system or combined sewer and water system to a water district, the water district shall have the authority to operate the sewer system. Whenever a county transfers a water system or a combined water and sewer system to a sewer district, the sewer district shall have the authority to operate the water system.

A water district that includes a county sewer system within part of its boundaries may accept the sewer system from a county. A sewer district that includes a county water system within part of its boundaries may accept a water system from a county.

If a vacancy on a sewer district or water district board remains unfilled for six months, the county legislative authority shall make the necessary appointment or appointments.

Ownerships of most county or state lands are not considered under the 60 percent ownership petition method of annexation to a sewer or water district. The county and state properties included in such annexations are not subject to the sewer or water districts special assessments, rates or charges, except where service has been requested and provided to the properties.

At the initial elections following the consolidation of two or more sewer districts, or two or more water districts, one commissioner position shall be filled, so that gradually the number of commissioners is reduced to three persons.

Fiscal Note: none requested

LEGISLATIVE BILL DIGEST

SHB 1232

Changing provisions relating to sewer and water district annexations.

(DIGEST OF PROPOSED 1ST SUBSTITUTE)

Modifies powers of sewer districts and water districts in the event of specified annexation circumstances.

Modifies procedures to fill vacancies in certain sewer and water districts.

Modifies procedures for annexation of an area contiguous to sewer and water districts.

Modifies provisions of election of sewer and water district commissioners.

HOUSE BILL REPORT

SHB 1232

BY House Committee on Local Government (originally sponsored by Representatives Haugen and May)

Changing provisions relating to sewer and water district annexations.

House Committee on Local Government

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. (15)
Signed by Representatives Haugen, Chair; Nutley, Vice Chair; Allen, Bristow, Brough, Doty, Ebersole, Hine, Isaacson, May, Patrick, Rayburn, Smitherman, Winsley and Zellinsky.

House Staff: Steve Lundin (786-7127)

AS PASSED HOUSE MARCH 19, 1985

BACKGROUND:

Counties are authorized to operate sewer systems, water systems, or combined water and sewer systems. Counties are authorized to transfer such systems to sewer or water districts. Such a transfer is deemed to constitute an annexation of the area served by the sewer or water system to the sewer or water district.

Water districts can operate sewer systems pursuant to the laws of sewer districts. Sewer districts can operate water systems pursuant to the laws of water districts.

A sewer district generally cannot be created that includes territory in another sewer district. A water district generally cannot be created that includes territory in another water district. However, a sewer district and water district may merge, where either the sewer district includes territory from another water district in part of its boundaries or the water district includes territory from another sewer district in part of its boundaries, but the water systems or sewer systems of the merged district shall not compete with those of the other sewer district or water district.

Vacancies on a sewer district board or water district board, where at least one commissioner remains on the board, are filled by action of the remaining board member or members.

Areas contiguous to a sewer district or water district may annex to the district if a petition requesting such annexation is signed by the owners of at least 60 percent of the land area.

When two or more sewer districts, or two or more water districts, consolidate, there are no elections for new commissioners until less than three commissioners remain on the board, at which time a new commissioner or commissioners are elected to provide for a three member board.

SUMMARY:

Whenever a county transfers a sewer system or combined sewer and water system to a water district, the water district shall have the authority to operate the sewer system. Whenever a county transfers a water system or a combined water and sewer system to a sewer district, the sewer district shall have the authority to operate the water system.

A water district that includes a county sewer system within part of its boundaries may accept the sewer system from a county. A sewer district that includes a county water system within part of its boundaries may accept a water system from a county.

If a vacancy on a sewer district or water district board remains unfilled for six months, the county legislative authority shall make the necessary appointment or appointments.

Ownerships of most county or state lands are not considered under the 60 percent ownership petition method of annexation to a sewer or water district. The county and state properties included in such annexations are not subject to the sewer or water districts special assessments, rates or charges, except where service has been requested and provided to the properties.

At the initial elections following the consolidation of two or more sewer districts, or two or more water districts, one commissioner position shall be filled, so that gradually the number of commissioners is reduced to three persons.

Fiscal Note: Not Requested.

House Committee - Testified For: Steve Gano, Wash. Assn. Sewer Districts.

House Committee - Testified Against: None Presented.

House Committee - Testimony For: (1) This clarifies existing law. (2) This gives sewer and water districts the needed authority to operate the water and sewer facilities a county may transfer to them.

House Committee - Testimony Against: None Presented.

GO

MAR 21 1985

SUBSTITUTE HOUSE BILL NO. 1232

by Committee on Local Government (originally sponsored by Representatives Haugen and May)

Changing provisions relating to sewer and water district annexations.

LEGISLATIVE ACTION	HOUSE (Fl # 790)	SENATE (Fl #)
Filed // Received	3-8-85	
Introduced / Read 1st time	3-8-85	3-20-85
Referred/Rereferred to COMMITTEE on:	Rules	Govt. Op.
Reported w/MAJORITY recommendation		
w/MINORITY recommendation		
RULES 2	☑ 3-8-85	☐
Rules suspended/Adv to 2nd Rdg.	☐	☐
Read 2nd time	3-19-85	
SUBSTITUTED // AMENDED // HELD	☐S ☐A ☐H	☐A ☐H
RULES 3	☐	☐
Rules suspended / adv to 3rd Rdg.	☑ 3-19-85	☐
Read 3rd time // Held	☑3 ☐H 3-19-85	☐3 ☐H
PASSED / FAILED YEAS-NAYS	☑P ☐F 95-0	☐P ☐F
Notice of reconsideration given	☐	☐
Vote on reconsideration/Passed/Failed	☐P ☐F	☐P ☐F
Title Agreed to	☑ 3-19-85	☐
CHIEF CLERK // SECRETARY OF SENATE	Dennis L. Heck	
	DENNIS L. HECK	SID SNYDER
Received // Returned		
DO NOT CONCUR // DO CONCUR	☐DNC ☐DC	
DO CONCUR w/exception	☐DC w/e	
Insist / Recede		☐I ☐R
Recede w/exception		☐R ☐R w/e
PASSED / FAILED YEAS-NAYS	☐P ☐F	☐P ☐F
Date of Action		
As Senate Amended // w/o Sen. Amd	☐A ☐w/o	☐A ☐w/o
CHIEF CLERK // SECRETARY OF SENATE		
	DENNIS L. HECK	SID SNYDER
Enrolled/Signed by Speaker of House		
Signed by President of Senate		
Delivered to Governor		
EXECUTIVE ACTION:	Governor Signed:	Veto ☐ Partial Veto ☐
Filed w/Secretary of the State		
Action Taken Regarding Veto/Partial Veto		

SENATE COMMITTEE SERVICES — ATTENDANCE ROSTER

COMMITTEE: GOVERNMENTAL OPERATIONS **BILL NO.** SHB 1232

DATE: 4-2-85 **SHORT TITLE:** Sewer and water district annexation

NAME	ORGANIZATION	MAILING ADDRESS	TELEPHONE	WISH TO TESTIFY? (YES/NO)	IF SO, PRO/CON
PLEASE PRINT STEVE GANO	ASSOC OF SEWER DIST's	STREET CITY OLY ZIP	754-3290	YES	Pro.
PLEASE PRINT JOE DANIELS	S.W. SUBURBAN SEWER DIST	STREET 431 AMBAUM S/W CITY SEA. 98106 ZIP	244-9575	If Neccesary	PRO
PLEASE PRINT RON MAIN	KING COUNTY	STREET CITY ZIP		NO	PRO
PLEASE PRINT		STREET CITY ZIP			
PLEASE PRINT		STREET CITY ZIP			
PLEASE PRINT		STREET CITY ZIP			
PLEASE PRINT		STREET CITY ZIP			
PLEASE PRINT		STREET CITY ZIP			
PLEASE PRINT		STREET CITY ZIP			
PLEASE PRINT		STREET CITY ZIP			

REPORT OF STANDING COMMITTEE

April 4, 1985

SUBSTITUTE HOUSE BILL NO. 1232

(Type in brief title exactly as it appears on back cover of original bill)

Changing provisions relating to sewer and water district annexations.

(reported by Committee on Government Operations): (11)

Recommendation - Majority

X Do pass

____ Do pass as amended

____ That Substitute Senate Bill No. ____ be substituted therefor, and the substitute bill do pass

____ Other ____

Thompson, Chairman
McManus, Vice Chairman
Bailey
DeJarnatt
Garrett
Granlund
McCaslin
Pullen
Rinehart
Saling
Zimmerman

Alan Thompson, Chairman

Mike McManus, Vice Chairman

Cliff Bailey

Arlie U. DeJarnatt

Avery Garrett

Barbara A. Granlund

Bob McCaslin

Kent Pullen

Nita Rinehart

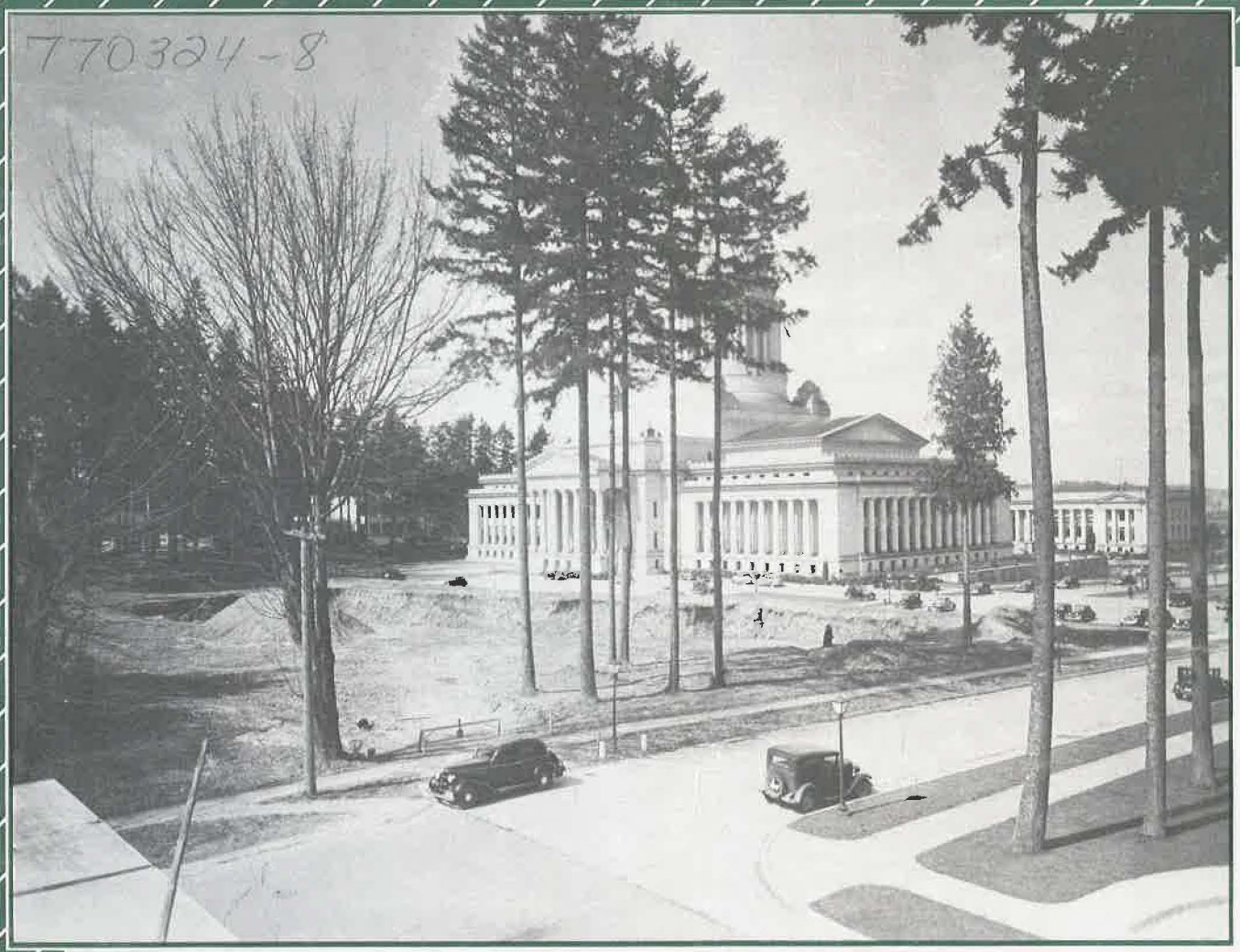
Gerald L. (Jerry) Saling

Harold S. "Hal" Zimmerman

Passed to Committee on Rules for Second Reading

APPENDIX H

FINAL LEGISLATIVE REPORT



FORTY-NINTH WASHINGTON STATE LEGISLATURE

1985 Regular and 1st Special Sessions

SHB 1207

C 437 L 85

By Committee on Trade & Economic Development (originally sponsored by Representative McMullen)

Establishing an emergency pilot vocational training program.

House Committee on Trade & Economic Development

Senate Committee on Commerce & Labor

BACKGROUND:

Frequently, workers who have been displaced from traditional industries lack the skills and training necessary to obtain new jobs. Community colleges are located in many distressed areas of the state and are able to provide vocational training programs to these workers.

SUMMARY:

An emergency pilot vocational training program is created to provide retraining in vocational skills. Eligible persons are not to be required to pay tuition and their participation in this program will not make them ineligible for unemployment compensation. The program is to be implemented through Lower Columbia Community College, Centralia Community College, Grays Harbor Community College, Skagit Valley Community College, Spokane Community College and Yakima Valley Community College. The program shall expire on July 1, 1987.

A person is eligible to participate in this program if he or she:

1. Meets the requirements of a resident student;
2. Resides in a community where the unemployment rate is 20 percent above the state average;
3. Has been unemployed full-time for a minimum of two years in a trade or occupation where he or she had used a skill which is in declining demand;
4. Is unemployed due to a significant reduction in force or a plant closure within two years before the person applied for the program; and
5. Has been continuously unemployed for the period of ten weeks prior to application to the program.

An eligible person may also attend a vocational technical-institute. The State Board for Community College Education is to pay vocational-technical institutes for their provision of services.

The State Board of community college education is to administer the program. The act will be implemented only to the extent that funds are available.

VOTES ON FINAL PASSAGE:

House	98	0	
Senate	47	0	(Senate amended)
House	97	0	(House concurred)

EFFECTIVE: June 30, 1985

SHB 1232

C 141 L 85

By Committee on Local Government (originally sponsored by Representatives Haugen and May)

Changing provisions relating to sewer and water district annexations.

House Committee on Local Government

Senate Committee on Governmental Operations

BACKGROUND:

Counties are authorized to operate sewer systems, water systems, or combined water and sewer systems. Counties are authorized to transfer such systems to sewer or water districts. Such a transfer is deemed to constitute an annexation by the sewer or water district of the area.

Water districts can operate sewer systems pursuant to the laws of sewer districts. Sewer districts can operate water systems pursuant to the laws of water districts.

A sewer district generally cannot be created that includes territory in another sewer district. A water district generally cannot be created that includes territory in another water district. However, a sewer district and water district may merge, where either the sewer district includes territory

from another water district in part of its boundaries or the water district includes territory from another sewer district in part of its boundaries, but the water systems or sewer systems of the merged district shall not compete with those of the other sewer district or water district.

Vacancies on a sewer district board or water district board, where at least one commissioner remains on the board, are filled by action of the remaining board member or members.

Areas contiguous to a sewer district or water district may annex to the district if a petition requesting such annexation is signed by the owners of at least 60 percent of the land area.

When two or more sewer districts, or two or more water districts, consolidate, there are no elections for new commissioners until less than three commissioners remain on the board, at which time a new commissioner is or commissioners are elected to provide for a three member board.

SUMMARY:

Whenever a county transfers a sewer system or combined sewer and water system to a water district, the water district shall have the authority to operate the sewer system. Whenever a county transfers a water system or a combined water and sewer system to a sewer district, the sewer district shall have the authority to operate the water system.

A water district that includes a county sewer system within part of its boundaries may accept the sewer system from a county. A sewer district that includes a county water system within part of its boundaries may accept a water system from a county.

If a vacancy on a sewer district or water district board remains unfilled for six months, the county legislative authority shall make the necessary appointment or appointments.

Ownerships of some county or state lands are not considered under the 60 percent ownership petition method of annexation to a sewer or water district. The county and state properties included in such annexations are not subject to the sewer or water districts special assessments, rates or charges, except where service has been requested and provided to the properties.

At the initial elections following the consolidation only two or more sewer districts, or two or more water districts, one commissioner position shall be filled, so that gradually the number of commissioners is gradually reduced to three persons.

VOTES ON FINAL PASSAGE:

House	95	3
Senate	45	1

EFFECTIVE: July 28, 1985

SHB 1234

PARTIAL VETO

C 159 L 85

By Committee on Agriculture (originally sponsored by Representative Vekich)

Designating state agency responsibilities for agricultural market development programs and activities.

House Committee on Agriculture

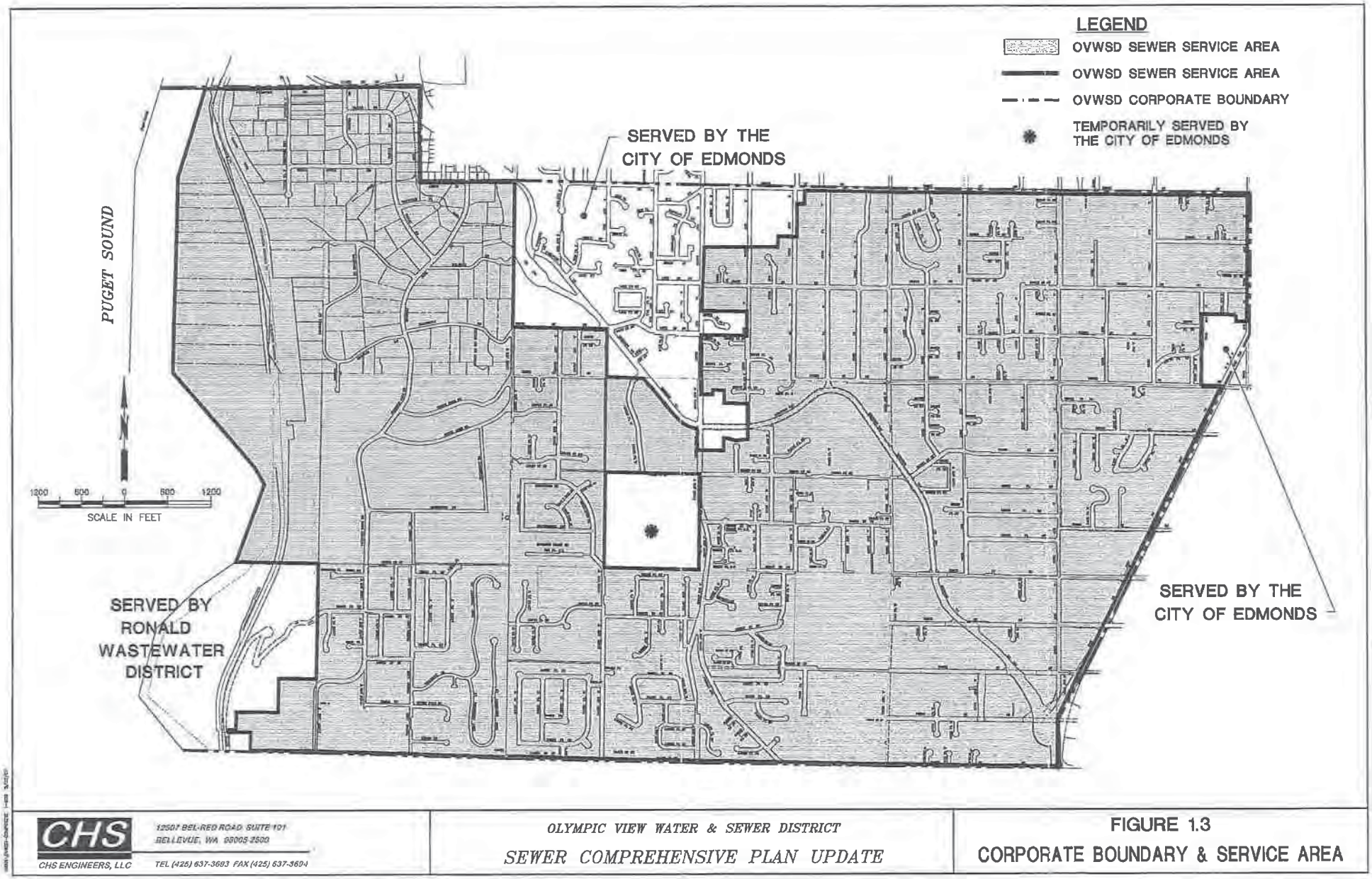
Senate Committee on Agriculture

BACKGROUND:

State law requires the Director of Agriculture to promote the economical and efficient distribution of farm products. To accomplish this task, the Director may conduct a variety of activities including maintaining a market news service and investigating transportation methods and rates. State law also assigns the Director and the Department of Agriculture various authorities for providing administrative support to the commodity commissions and boards created by marketing orders and agreements.

Among the divisions of the Department of Commerce and Economic Development created by statute is the foreign trade division, known as the Office of Foreign Trade. The duties of the Office include: studying the potential marketability of various agricultural, natural resource, and manufacturing commodities of this state in foreign trade; collecting, preparing and analyzing foreign and domestic market data; making Washington's agricultural, natural resource, and manufacturing concerns more aware of the potentials of foreign trade; and establishing an honorary commercial attache program.

APPENDIX I



CHS ENGINEERS, LLC
12507 BEL-RED ROAD SUITE 101
BELLEVUE, WA 98005-2500
TEL (425) 637-3693 FAX (425) 637-3694

OLYMPIC VIEW WATER & SEWER DISTRICT

SEWER COMPREHENSIVE PLAN UPDATE

FIGURE 1.3
CORPORATE BOUNDARY & SERVICE AREA

No. 78516-8-I

COURT OF APPEALS
DIVISION I
OF THE STATE OF WASHINGTON

OLYMPIC VIEW WATER AND SEWER DISTRICT, a Washington municipal corporation; and TOWN OF WOODWAY, a Washington municipal corporation,

Appellants,

v.

RONALD WASTEWATER DISTRICT, a Washington municipal corporation,

Respondent,

And

SNOHOMISH COUNTY, a Washington municipal corporation; KING COUNTY, Washington municipal corporation; CITY OF SHORELINE, a Washington municipal corporation,

Defendants

DEFENDANT CITY OF SHORELINE'S MOTION FOR RECONSIDERATION AND CLARIFICATION

Margaret King, WSBA #34886
Julie Ainsworth-Taylor, WSBA #36777
Attorneys for City of Shoreline
Office of the City Attorney
17500 Midvale Avenue N
Shoreline, WA 98133-4905
Tel: 206-801-2223

Terry Danysh, WSBA #14313
Sarah Cox, WSBA #46703
Co-Counsel for City of Shoreline
Dorsey & Whitney, LLP
701 Fifth Avenue, Suite 6100
Seattle, WA 98104
Tel: 206-903-8847

I. REQUEST FOR RELIEF

Pursuant to RAP 12.4, the City of Shoreline respectfully files this Motion for Reconsideration and Clarification of the Court's July 1, 2019 decision ("Order") in the above-captured matter as set forth below. Specifically, if a court lacks subject matter jurisdiction, is any order issued by the court void in its entirety or is it possible for the order to partially void. In addition, if the Court denies reconsideration, Shoreline request clarification on the legal status of the contractual obligations entered into by the Ronald Wastewater District related to Point Wells and the ownership of Lift Station No. 13 and associated infrastructure.

II. MOTION FOR RECONSIDERATION

The City of Shoreline respectfully requests that the Court reconsider its ruling regarding subject matter jurisdiction, resulting in a finding that the King County Superior Court Order was void. While the Court noted that it may "find lack of subject matter jurisdiction only under compelling circumstances such as when it is *explicitly limited* by the legislature" it then inappropriately infused provisions of former Title 56 RCW and former Title 57 RCW into former RCW 36.94.410-440, with a dash of chapter 36.93 RCW, to create a "geographical limitation" on the definition of "area served" not expressly provided for.

From here, the Court then erroneously concluded that the more restrictive definition was a limit on the King County Superior Court's subject matter jurisdiction resulting in a void (or partially void) 1985

Transfer Order. Order at 26-27; 29.[1] Because the definition of "area served" is not jurisdictional, the City seeks reconsideration of that aspect of the Court's decision.

1. The Superior Court had Subject Matter Jurisdiction to enter its 1985 Order.

Subject matter jurisdiction is the authority of the court to hear and determine the class of actions to which the case belongs. In this case, there is no question that the legislature gave superior courts the authority to consider and enter orders for petitions to transfer and annex sewer systems from a county to a sewer district. While the Court may believe that the King County Superior Court's decision to include the area served in Snohomish County in the 1985 Transfer Order was an error, it failed to recognize the distinction between the binding effect of an erroneous decision and one that must be declared *void ab initio*.

Jurisdiction is the power and authority of a court to act. *Dougherty v. Dept. of Labor & Indus,* 150 Wn.2d 310, 315-16, 76 P.3d 1183 (2003). Subject matter jurisdiction in particular refers to a court's ability to entertain a case, *not its authority to enter an order in a given case.*

---

[1] In its Motion for Reconsideration, the Ronald Wastewater District sets forth a thorough and reasoned analysis as to the statutory framework, that makes it clear that there are no such geographical limitations for the "area served." The City of Shoreline incorporates that motion herein by reference and concurs in its analysis.
Because the Court incorrectly relied on some statutory provisions raised for the first time by the Court itself, either at oral argument or in the Order that were not briefed by the parties, a review of Ronald's separate Motion for Reconsideration explains how the Court applied inapplicable provisions.

Buecking v. Buecking, 179 Wn.2d 438, 447, 316 P.3d 999 (2013) (emphasis added). Thus, subject matter jurisdiction critically turns on the "type of controversy." *ZDI Gaming Inc. v. State of Washington,* 173 Wn.2d 608, 617-18, 268 P. 39 929 (2012). If the "type of controversy" is within the subject matter jurisdiction of the court, then all other defects or errors apply to something other than subject matter jurisdiction. *Id.* at 618; *Young v. Clark,* 149 Wn.2d 130, 133, 65 P.3d 1192 (2003). While a court's alleged failure to operate within the statutory framework may be legal error, that error does not equate to a "loss of jurisdiction." *In re Marriage of Buecking & Buecking*, 167 Wn. App. 555, 559–60, 274 P.3d 390, 392–93 (2012), aff'd sub nom. *Buecking v. Buecking*, 179 Wn.2d 438, 316 P.3d 999 (2013) (Holding that even though the court's failure to observe a statutory waiting period may have been legal error, it does not result in loss of jurisdiction).

In this case, subject matter jurisdiction was conferred by the legislature. RCW 36.94.410 plainly states that a county can transfer a system to a special purpose district following the process set forth in RCW 36.94.310 through 36.94.350. RCW 36.94.340 confirms that the transfer "proceedings may be *initiated in the superior court for that county by filing of a petition."* (emphasis added). The plain language of these provisions does not limit the "type of controversy" the superior court can hear. Nothing in these provisions can reasonably be read to limit or

exclude the broad subject matter jurisdiction of a superior court to act on a petition filed under this provision.

To conclude that the RCW 36.94 provisions cited above somehow limited the King County Superior Court to entering a ruling as to property located solely within the bounds of King County is contrary to the plain language of these provisions and the lineage of decisions holding that the legislature can't limit the subject matter jurisdiction of the superior court "as among superior courts." *ZDI Gaming,* 173 Wn.2d at 616. *See also Dougherty,* 150 Wn.2d at 317 (holding that if the 'type of controversy' depends on which county the case is filed or heard in, then *all venue provisions would become subject matter jurisdiction provisions.) Kilian,* 147 Wn.2d at 20; *Simpson Inv. Co.* , 141 Wn.2d at 149; *Campbell & Gwinn*, 146 Wn.2d at 9-11; *HJS Development*, 148 Wn.2d at 471; *Rivard,* 168 Wn.2d at 783. Even if RCW 36.94 alluded to subject matter jurisdiction, this is the *very* "type" of case that was before the Court in 1985. Specifically, the approval of a transfer agreement between a county and a sewer district initiated by a petition to the superior court.

The Court is in good company with other courts in confusing the concept of subject matter jurisdiction in relation to determining whether a previous court order is void or voidable. In *Cole v. Harveyland*, 163 Wn. App. 199, 208, 258 P.3d 70, 75 (2011), the Court recognized this confusion and explained:

> As the United States Supreme Court has observed, "jurisdiction" is a word of too many meanings. Courts have sometimes been "profligate" in the use of the term, producing "unrefined dispositions" that the Court has referred to as "'drive-by jurisdictional rulings.'" Our Supreme Court has similarly observed that "'improvident and inconsistent'" use of the term "subject matter jurisdiction" has caused it to be confused with a court's authority to rule in a particular manner. "'If the phrase is to maintain its rightfully sweeping definition, it must not be reduced to signifying that a court has acted without error.'"
>
> Despite these cautionary rulings, the terminology of subject matter jurisdiction continues to pop up outside its boundaries like a jurisprudential form of tansy ragwort.

Id. (internal citations omitted).

In *Cole*, the alleged error related to the definition of "employer" in a statute and whether the statute required a showing that the employer was within that definition in order to confer jurisdiction over the discrimination claim. The Court concluded that the statutorily required eight employee threshold for antidiscrimination claims was a matter of substantive law to be raised at trial, not a prerequisite of subject matter jurisdiction. *Id.* at 63 Wn. App. 199, 209, 258 P.3d 70, 75–76 (2011),

The facts here are similar to those in *Cole*, and the Court's conclusion that the King County Superior Court incorrectly interpreted "area served" to be able to include area located in Snohomish County was

an area of substantive law, not a prerequisite to subject matter jurisdiction. As such, the error did not divest the King County Superior Court of jurisdiction to accept and enter orders regarding petitions to transfer and annex between a county and a sewer district.

The Court explicitly recognizes that the King Superior Court had received annexation authority to effectuate a transfer between a county and a sewer district. Order at 22. The legal "error" the Court found went to what property was included in the "area served" in the Superior Court's order. Order at 28. In fact, the Court's conclusion in this case that the King County Superior Court's 1985 Transfer Order is only void "to the extent that the Transfer Order purports to authorize the Ronald Wastewater District's annexation of the area within Snohomish County and Olympic" makes it clear that this Court is conflating legal error in statutory interpretation with lack of subject matter jurisdiction. Order at 31.

Subject matter jurisdiction either exists or it doesn't. Here the Court essentially strikes from the 1985 Transfer Order the transfer of the area served that was located in Snohomish County. Order at 31. The Court, however, can't simultaneously conclude that the King County Superior Court had jurisdiction to enter part of the 1985 Transfer Order while simultaneously concluding that the same order is void as a result of lack of subject matter jurisdiction. If the King County Superior Court actually lacked true subject matter jurisdiction, the Superior Court's entire

order would have been invalid and would have to be voided. *Rabbage v. Lorella*, 426 P.3d 768, 773 (Wash. Ct. App. 2018) ("If the default decree was void, [the court] would not have had the power to salvage any part of it.")

The Court's conclusion that the King County Superior Court erred in its interpretation and application of RCW 39.34.440 to include the area being served by the system in Snohomish County simply is not jurisdictional. The King County Superior Court's subject matter jurisdiction was present as a result of the specific authority granted it by the Legislature. Moreover, the Court's creation of a definition of "area served" did not "strip" the King County Superior Court of its subject matter jurisdiction to determine, correctly or incorrectly, the "area served" in its transfer and annexation Order.[2]

---

[2] The Court conclusion that the definition of "service area" created in 1995 by the legislature somehow supports this matter as stated in Footnote 24 is not correct. In Fn. 24, the Court concludes that the definition of "service area" in a 1995 amendment to the Boundary Review Board statute, RCW 36.93.090, that includes area outside of a district's corporate boundaries, must mean that prior to then "service area" did not include area outside of a district's corporate boundaries. The Court applies this as a limitation to RCW 36.94.410-440's exemption from boundary review board review. RCW 36.93.090(4) was not part of the original BRB statute; rather it was added in 1971 as the sole amendment addressed by SSB 5209, 133, c. 127 Sec. 1. This language stayed the same despite multiple amendments to the statute until 1995 when "corporate boundaries" was replaced with "service area" and a definition of that term provided. As the legislative history made clear, spawned by a single incident related to a water line, the intent was to eliminate unnecessary hearings, legal costs, and delay by recognizing service area boundaries and the extension of service consistent with service area plans that had already undergone sufficient process. Thus, SSB 5209 did not define "service area" in relationship to RCW 36.94. Rather it made clear that if an extension was occurring within an area covered by a coordinated water plan or a comprehensive sewer plan, regardless of corporate boundaries, that the Boundary Review Board was not to review these extensions. The same situation was present in this matter – King County

The Legislature, with the adoption of RCW 36.94.410-.440, did not restrictively define the "type" of case for which a superior court had jurisdiction. Even if the Court now believes that the King County Superior Court's interpretation of the "area served" was incorrect, an order or ruling is not void just because a party or court believes it to be erroneously made or an erroneous interpretation of the law. *Marley v. Dept. of Labor & Industries,* 125 Wn.2d 533, 541-543, 886 P.2d 189 (1994) (quoting *Dike v. Dike*, 75 Wn.2d 1, 8, 448 P.2d 490 (1968) (stating the court should not transform mistakes in statutory construction or errors of law into jurisdictional flaws and "[t]he power to decide includes the power to decide wrong, and an erroneous decision is as binding as one that is correct"); *Mead School District No. 354 v. Mead Education Ass'n,* 85 Wn.2d 278, 280, 534 P.2d 561 (1975); see also, *Doe v. Fife Mun. Court*, 74 Wn. App. 444, 874 P.2d 182 (1994) (holding erroneous judgments - as opposed to void judgments - are not subject to collateral attack).

By ruling the 1985 Transfer Order was statutory authorized in King County but was void in Snohomish County, the Court found partial compliance. But the RCW grants jurisdiction based on the type of controversy not the relative level of compliance. Because an order is *only*

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had a comprehensive sewer plan for the Richmond Beach Sewer System that included the Point Wells area. The legislature understood that just because an area was in a particular district's corporate boundaries that did not mean that district was providing service in that area. This is a main reason for the legislature's "first in time is first in right" to serve an area. RCW 57.08.007. The Court's conclusion simply ignores that legislative restriction.

void ab initio if the rendering court lacked subject matter jurisdiction over the type of case, the Court's decision to selectively amend the 1985 Transfer Order by finding that the King County Superior Court made a legal error in interpreting the definition of "area served" is contrary to law. *Kingery v. Dep't of Labor & Indus.*, 132 Wn.2d 162, 170, 937 P.2d 565 (1997) (plurality); *see also Smith v. Hammel*, Nos. 5-13-0227, 5-13-0293, 2014 Il. App (5th) 130227 (Jul. 23, 2014).

III. MOTION FOR CLARIFICATION

With its Order, the Court found the King County Superior Court did not have the authority to grant an annexation to the Ronald Wastewater District (Ronald) of territory within the municipal corporate boundaries of the Olympic View Water & Sewer District ("Olympic View"). And, because of this alleged restriction, the 1985 Transfer Order was void. Order at 31. However, despite this conclusion, as noted above the Court implicitly stated that the annexation of the sewer system within the boundaries of King County and the transfer of contracts was not impacted. Order at 13. In other words, the 1985 Transfer Order was partially void and partially valid.

Even if the Court denies reconsideration and affirms its holding that the area served in Snohomish County by King County could not have been annexed to Ronald under RCW 36.94.410-.440, RCW 57.08.007 recognizes that more than one provider may be in an area and provides for a "first in time, first in right" based on either the availability of service or

the planning for service. Since the early 1970s, Ronald has been the only sewer district providing service to the Point Wells area. In addition, Ronald has long been planning for and making infrastructure improvements within the Point Wells area. Ronald Responsive Brief at 14-15. King County, Snohomish County, Olympic View, the City of Edmonds, and the Town of Woodway have all been proceeding as if Ronald was the sole service provider. Id. At 16-19. A ruling from the Court that Ronald has a right to serve the Point Wells area based on RCW 57.08.007 would reflect this fact.[3]

If the Court does not grant the City's and Ronald's Motions for Reconsideration, thereby upsetting decades of continual sewer service to the area and reliance on the annexation to Ronald of the Point Wells area by the 1985 Transfer Order, Shoreline seeks clarification as to implication of the Court's Order on the contractual obligations entered into by Ronald and the infrastructure serving the Point Wells area. By declaring the 1985

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[3] While the Court denotes Olympic View began providing sewer service within its corporate boundaries in 1966 (Order at 3), it has never provided sewer service to the Point Wells area and, in fact, it was not until 2004, when the Town of Woodway transferred its sewer system to Olympic View that it even had a system adjacent to the Point Wells area. Additionally, Olympic View took actions that acknowledged that Ronald was planning for and providing service to the area. Olympic View never attempted to adopt any kind of a comprehensive sewer plan for the area until after 2014. Nor, did Olympic View object when Ronald issued the Certificate of Sewer Availability that was necessary in order for the developer of the Point Wells area to submit a complete application to develop the area. Olympic View issued the Certificate of Water Availability for the development. Moreover, Snohomish County and Olympic View both had notice that Ronald was designated as the provider of sewer for the area as Ronald was designated as the sewer provider in Snohomish County's GMA Comprehensive Plan (which is required by statute to identify the various utility providers for areas of the County).

Transfer Order void, the Court stated it is, in effect, as if no Transfer Order was ever entered by the superior court and for which no subsequent action could make it effective.[4] In the same realm, how could the contractual obligations that transferred with the 1985 Transfer Order be valid?[5]

There are several contracts at issue. On September 9, 1985, months after the transfer process had started but before the 1985 Transfer Order, Ronald extended its 1969 Agreement for Sewage Disposal with King County (then called METRO) until 2036 ("Disposal Agreement"). CP 900-914. With the Disposal Agreement, Ronald is required to deliver ALL of the sewage and industrial wastes collected by it to King County and to pay the applicable sewage disposal charge. Ronald has been collecting waste from the Point Wells area since at least the early 1970s. Thus, this waste is covered by the Disposal Agreement and the parties have been operating under this agreement since that time. In 1988 and then again in 1993, Ronald entered into agreements with Daniel Briggs to provide service to the three lots of the Briggs Plat within the Point Wells area. (collectively, the "Briggs Agreements") CP 708, 1157-69. The 1988

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[4] The Order at Fn. 25 and Section IV appear to acknowledge this. Also, in contract law, a contract that is void at its inception is an absolute nullity incapable of ratification. *Kellar v. Estate of Kellar,* 172 Wn. App. 562 at 584, 291 P.3d 906 (2012). It is as if no contract existed at all. Given the basis for the transfer of the contracts and the system was based on Ronald taking over the system, pump station and contracts from the County, it is unclear how the Court can find that the transfer related to that area is void but nevertheless everything that went with the transfer is valid.

[5] *Asset Acceptance LLC v. Nguyen,* 198 Wn. App. 1026 (Unpublished, 2017) noting that any court orders based on a void court order were also void.

Briggs Agreement, at Recital A, expressly notes the extension of service into Snohomish County and Lift Station No. 13. *Id.* The City requests that the Court clarify whether the Briggs Agreements are void in their entirety since even a savings/severability clause cannot make something that is void enforceable?[6]

In addition, Ronald infrastructure, namely Lift Station No. 13, is located within the Point Wells area. In 1995, Ronald expended $500,000 of ratepayer funds to upgrade and improve this Lift Station to provide service to the Point Wells area. CP 1626-36. In assumption proceedings before the Boundary Review Board of Snohomish County, Olympic View had argued that Lift Station No. 13 should become its property. While Shoreline believes Lift Station No. 13 is Ronald's by virtue of the Chevron agreement (CP 900-914) and, will become property of Shoreline when the assumption is complete, having a clear ruling from the Court would preclude any disputes as to the ownership of Lift Station No. 13 and its associated infrastructure.

Whether Ronald has obligations related to the Point Wells area and if it retains ownership of infrastructure is important for Shoreline to know as it moves forward with is assumption. RCW 35.13A.050 states that Shoreline will be assuming Ronald's responsibilities, property, facilities,

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[6] *Choong H. Lee, DMD, PLLC v. Thaheld/Lee-01, LLC,* 179 Wn. App. 1047 (Unpublished, 2014) (citing *Golden Pisces Inc. v. Fred Wahl Marine Construction Inc.,* 495 F. 3d 1078, 1081-82 (9th Cir. 2007)

and equipment. This RCW provision further states that for Ronald facilities lying outside of Shoreline but serving within Shoreline, like Lift Station No. 13, Shoreline must make available capacity for the economically useful life of the facilities. Thus, knowing what Shoreline will be assuming is imperative.

IV. CONCLUSION

For the reasons set forth above, the City of Shoreline respectfully requests that the Court reconsider its Decision that the King County Superior Court, based on the definition of "area served," lacked subject matter jurisdiction in regard to the 1985 Transfer Order.

If the Court denies reconsideration, the City requests that the Court provide clarification as to the application of RCW 57.08.007 and as to the impact of the July 1, 2019 Order on contractual obligations and infrastructure ownership.

Dated this 22nd day of July 2019.

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Julie Ainsworth-Taylor, WSBA #36777
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Tel: 206-801-2223

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Co-Counsel for City of Shoreline
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701 Fifth Avenue, Suite 6100
Seattle, WA 98104
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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

RONALD WASTEWATER DISTRICT, a Washington municipal corporation, Respondent, v. OLYMPIC VIEW WATER AND SEWER DISTRICT, a Washington municipal corporation; and TOWN OF WOODWAY, a Washington municipal corporation, Appellants, SNOHOMISH COUNTY, a Washington municipal corporation; KING COUNTY, a Washington municipal corporation; and CITY OF SHORELINE, a Washington municipal corporation, Defendants.	No. 78516-8-I ORDER DENYING MOTION FOR RECONSIDERATION

The respondent, Ronald Wastewater District, has filed a motion for reconsideration. A majority of the panel has determined that the motion should be denied.

Now, therefore, it is hereby

ORDERED that the motion for reconsideration is denied.

Appelwick, C.J.
Chief Judge

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

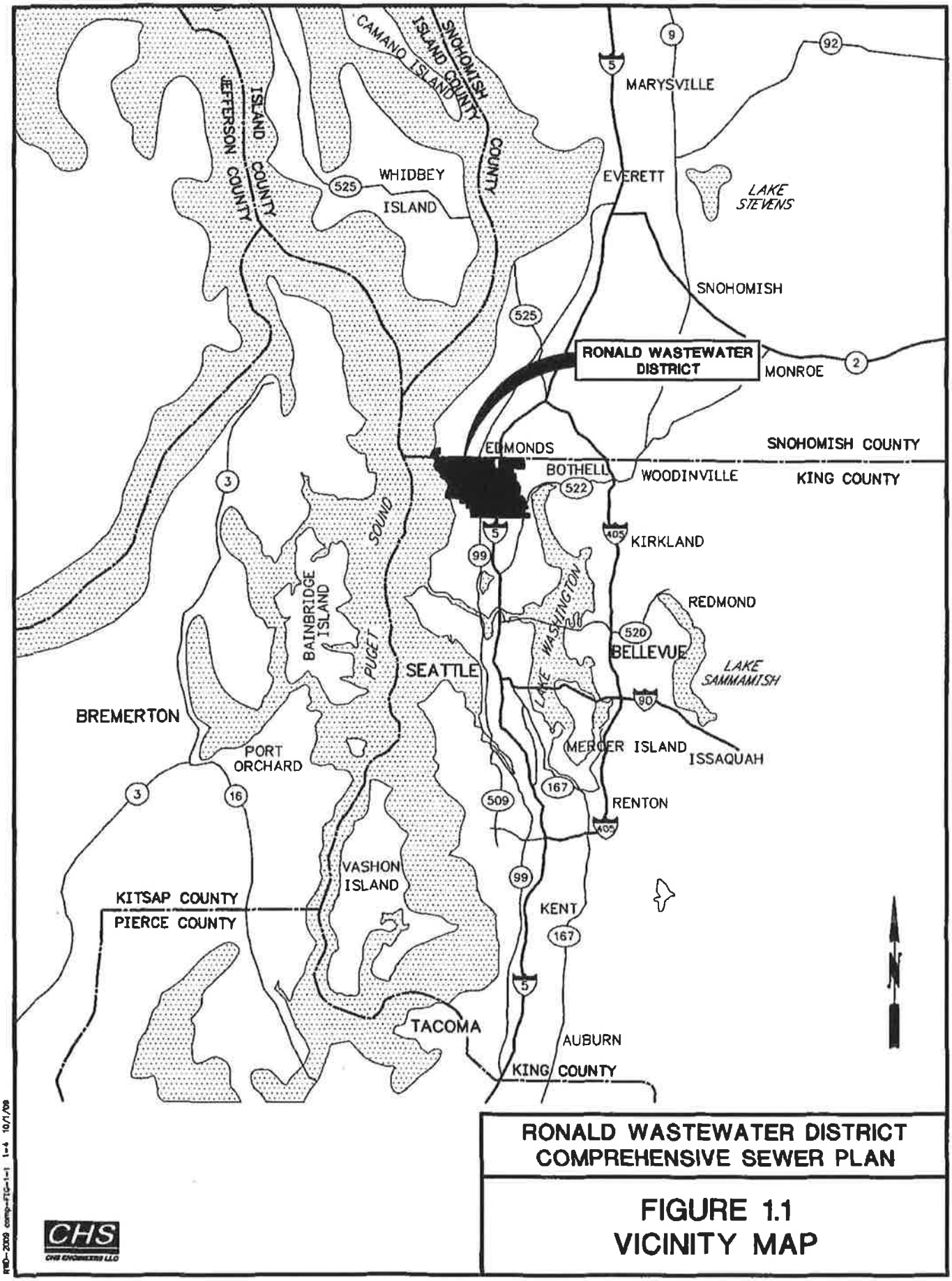
RONALD WASTEWATER DISTRICT, a Washington municipal corporation, Respondent, v. OLYMPIC VIEW WATER AND SEWER DISTRICT, a Washington municipal corporation; and TOWN OF WOODWAY, a Washington municipal corporation, Appellants, SNOHOMISH COUNTY, a Washington municipal corporation; KING COUNTY, a Washington municipal corporation; and CITY OF SHORELINE, a Washington municipal corporation, Defendants.	No. 78516-8-I ORDER DENYING MOTION FOR RECONSIDERATION

The defendant, City of Shoreline, has filed a motion for reconsideration. A majority of the panel has determined that the motion should be denied.

Now, therefore, it is hereby

ORDERED that the motion for reconsideration is denied.

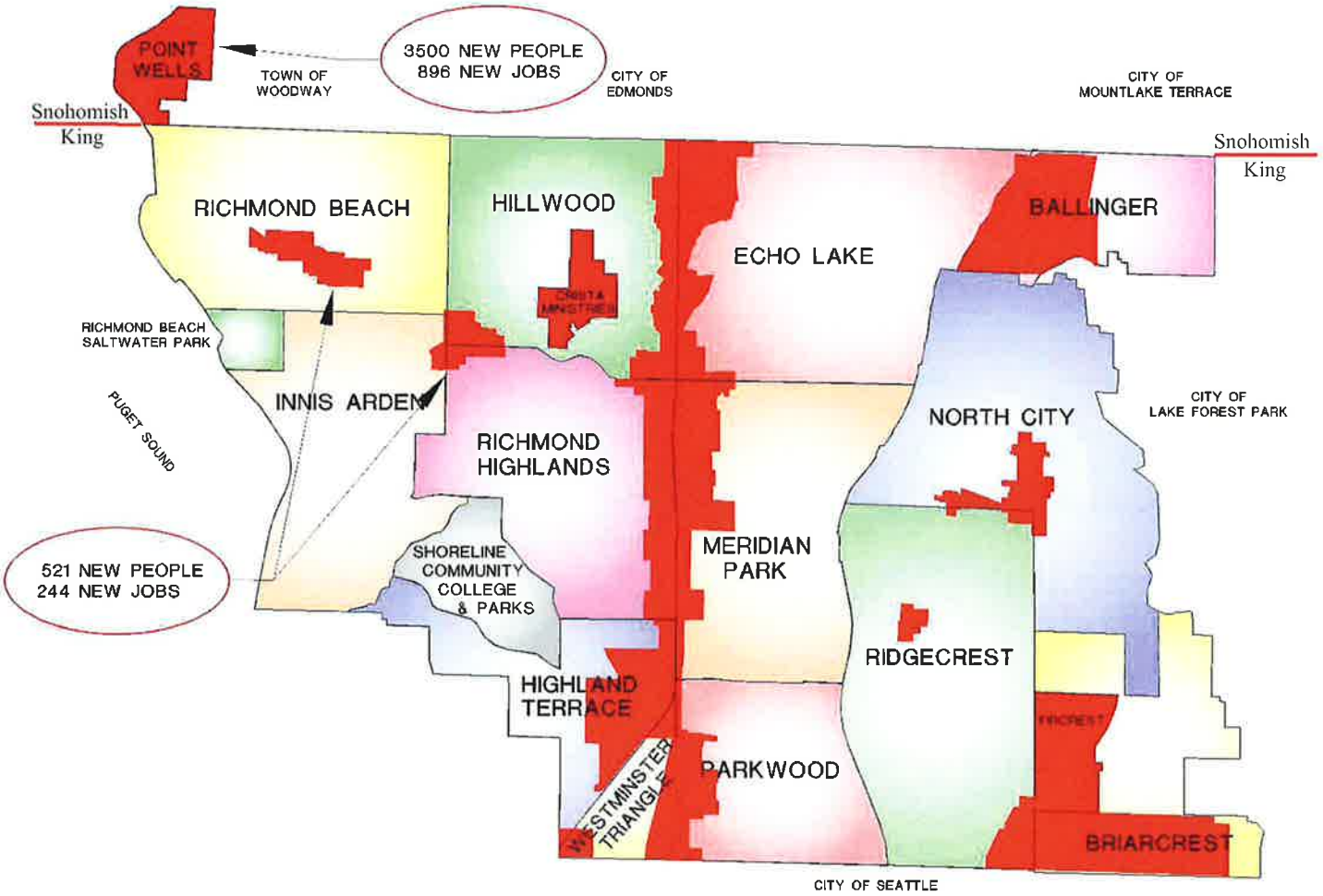
Appelwick, C.J.
Chief Judge



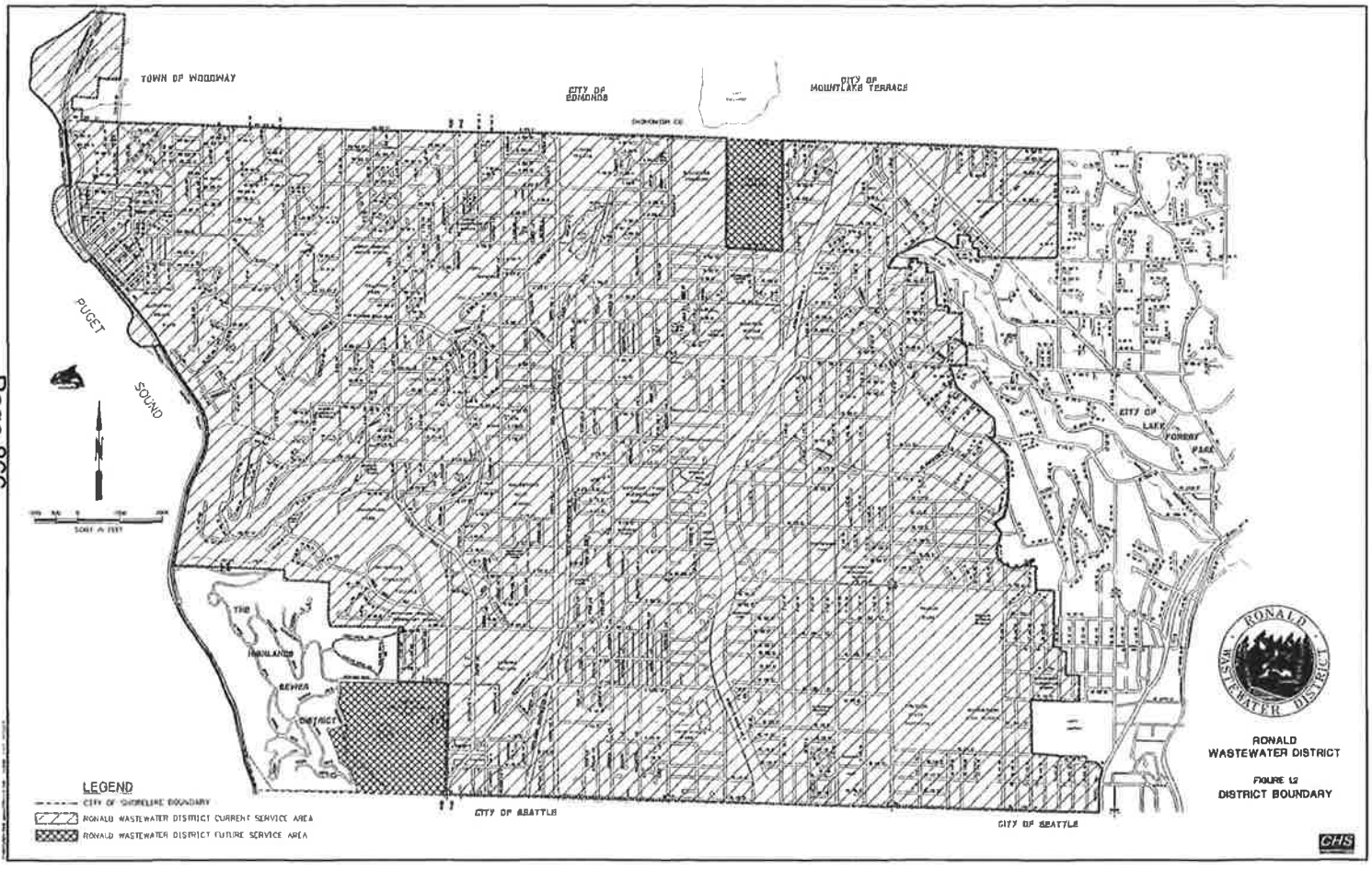
RONALD WASTEWATER DISTRICT
COMPREHENSIVE SEWER PLAN

FIGURE 1.1
VICINITY MAP

CHS ENGINEERS LLC



RONALD WASTEWATER DISTRICT
DESIGNATED GROWTH AREAS


TOWN OF WOODWAY
CITY OF EDMONDS
CITY OF MOUNTLAKE TERRACE
PUGET SOUND
CITY OF LAKE FOREST PARK
CITY OF SEATTLE
CITY OF SEATTLE
RONALD WASTEWATER DISTRICT
LEGEND
CITY OF SHORELINE BOUNDARY
RONALD WASTEWATER DISTRICT CURRENT SERVICE AREA
RONALD WASTEWATER DISTRICT FUTURE SERVICE AREA
RONALD WASTEWATER DISTRICT
FIGURE 12
DISTRICT BOUNDARY
GHS

RONALD WASTEWATER DISTRICT
CAPITAL IMPROVEMENT PROJECT DESCRIPTION

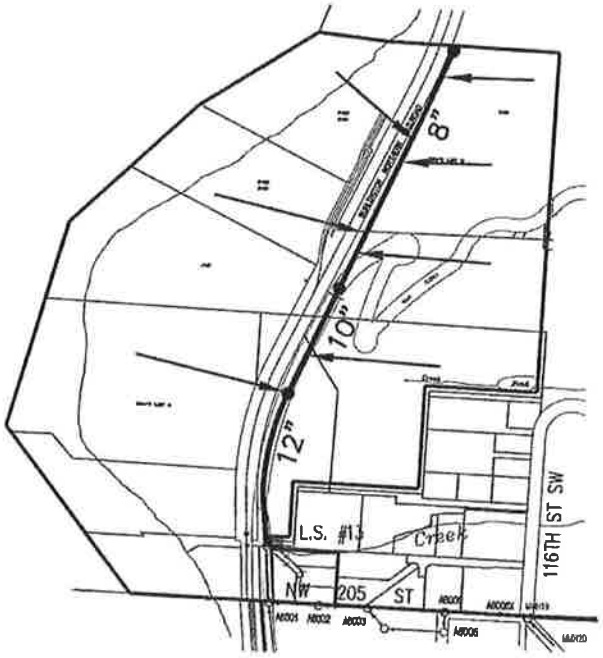
PROJECT SUMMARY

PROJECT NAME & NUMBER
7.4.11 Install New Collector Sewer Mains

ESTIMATED COST
$ 1,000,000

PROJECT DESCRIPTION

Install approximately 2,520 feet of 8", 10" and 12" sewer main to provide sewer service in the RWD Snohomish County Area. (see attached)



PROJECT BENEFIT/RATIONALE:

To allow future residential and commerical development to occur in the RWD Snohomish County area.

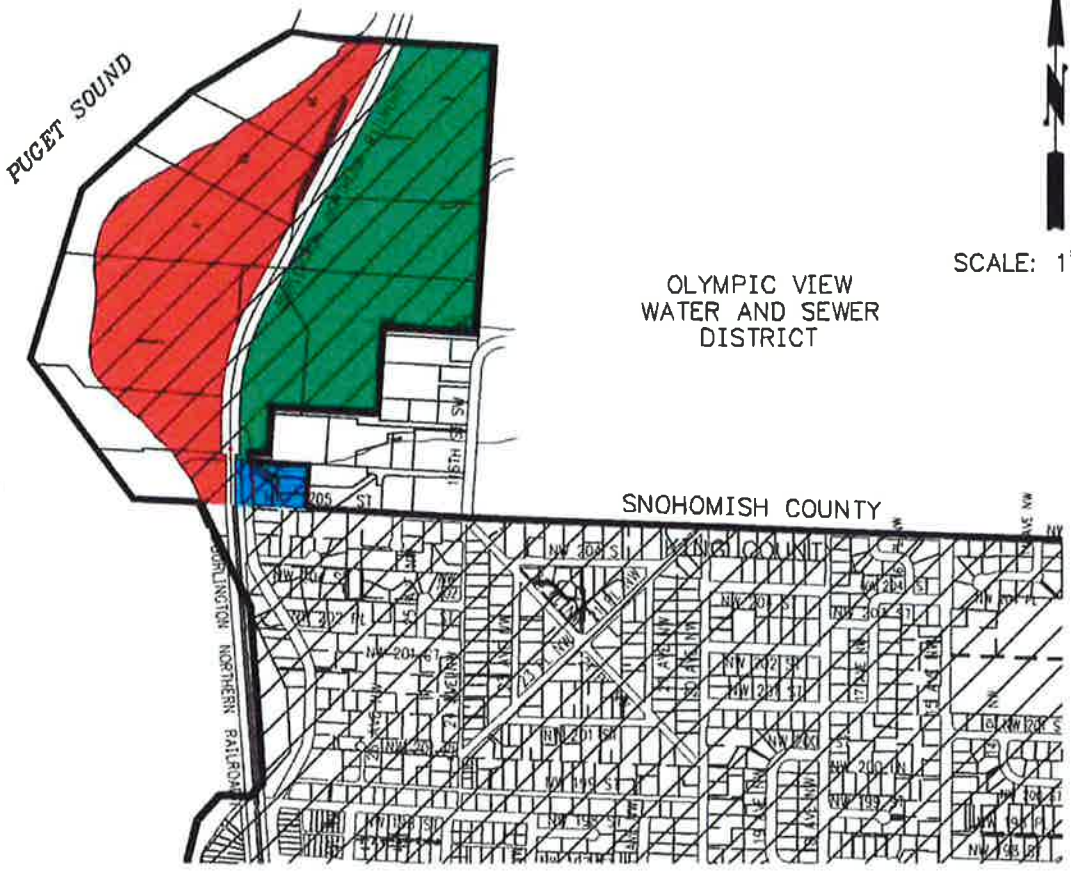
SCHEDULE:

TO BE DETERMINED

COST BREAKDOWN

PROJECT COST:

Engineering & Administration	$ 236,000
Construction	$ 676,000
Sales Tax	$ 88,000
TOTAL	$ 1,000,000



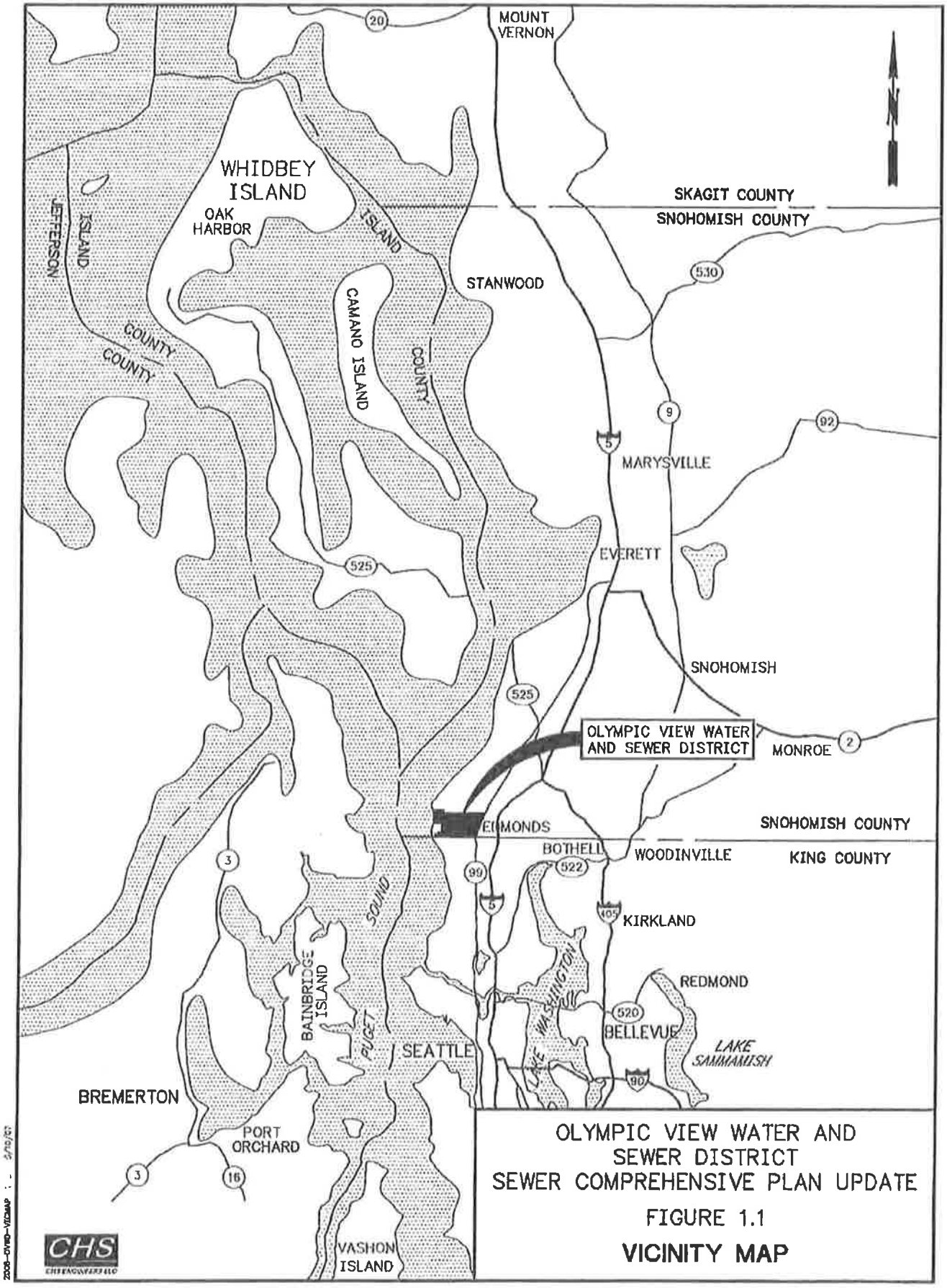
RONALD WASTEWATER DISTRICT

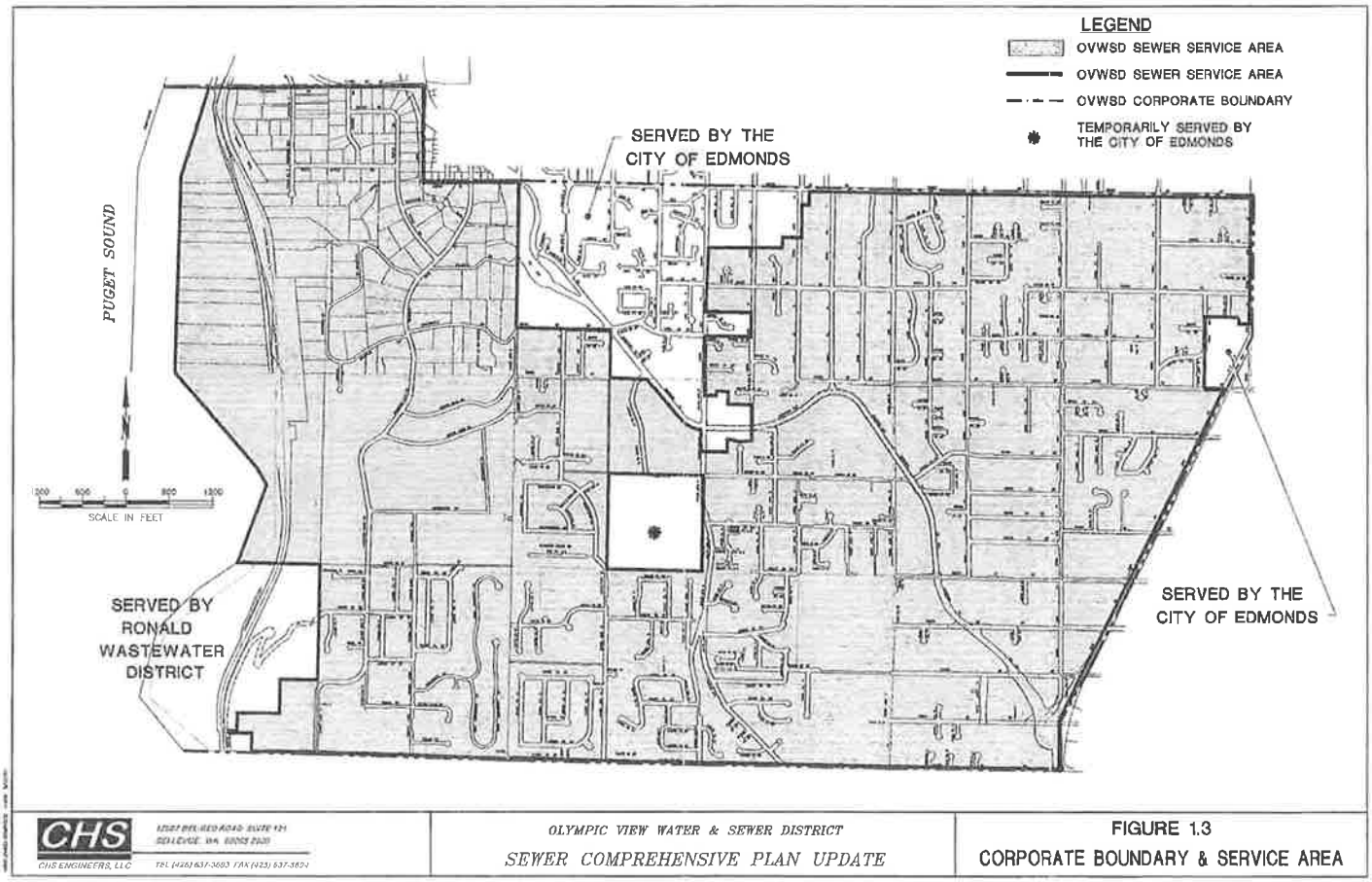
RONALD WASTEWATER DISTRICT

SNOHOMISH COUNTY SEWER SERVICE AREA IN RWD

FIGURE 1.4

CHS


MOUNT VERNON
20
WHIDBEY ISLAND
OAK HARBOR
JEFFERSON COUNTY
ISLAND COUNTY
CAMANO ISLAND
ISLAND COUNTY
SKAGIT COUNTY
SNOHOMISH COUNTY
STANWOOD
530
9
92
5
MARYSVILLE
EVERETT
525
SNOHOMISH
525
OLYMPIC VIEW WATER AND SEWER DISTRICT
MONROE
2
EDMONDS
SNOHOMISH COUNTY
BOTHELL
WOODINVILLE
KING COUNTY
522
99
5
405
KIRKLAND
3
PUGET SOUND
BAINBRIDGE ISLAND
LAKE WASHINGTON
REDMOND
520
BELLEVUE
LAKE SAMMAMISH
SEATTLE
90
BREMERTON
PORT ORCHARD
3
16
VASHON ISLAND
CHS
OLYMPIC VIEW WATER AND
SEWER DISTRICT
SEWER COMPREHENSIVE PLAN UPDATE
FIGURE 1.1
VICINITY MAP



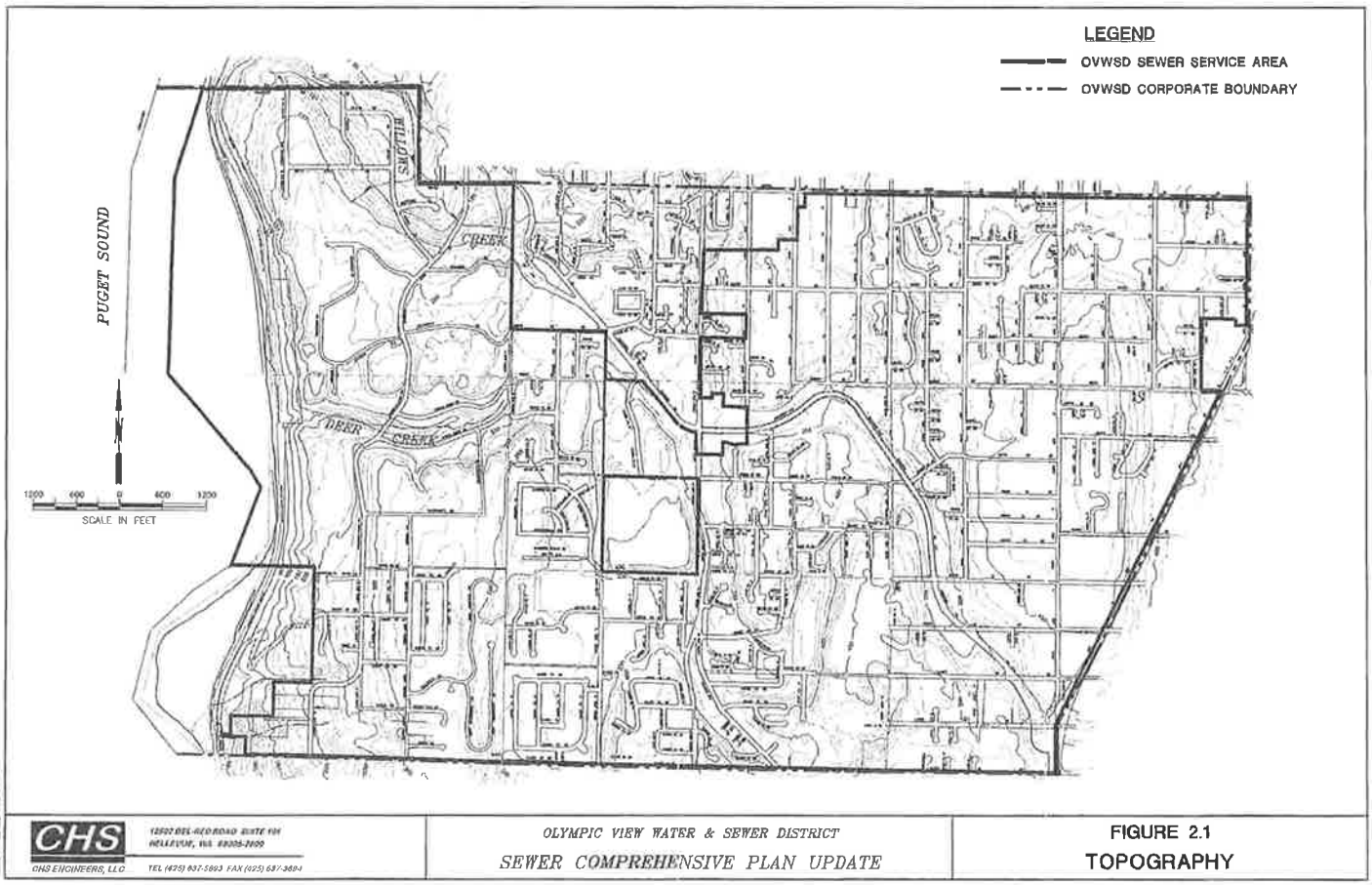
CHS ENGINEERS, LLC

OLYMPIC VIEW WATER & SEWER DISTRICT

SEWER COMPREHENSIVE PLAN UPDATE

FIGURE 1.3

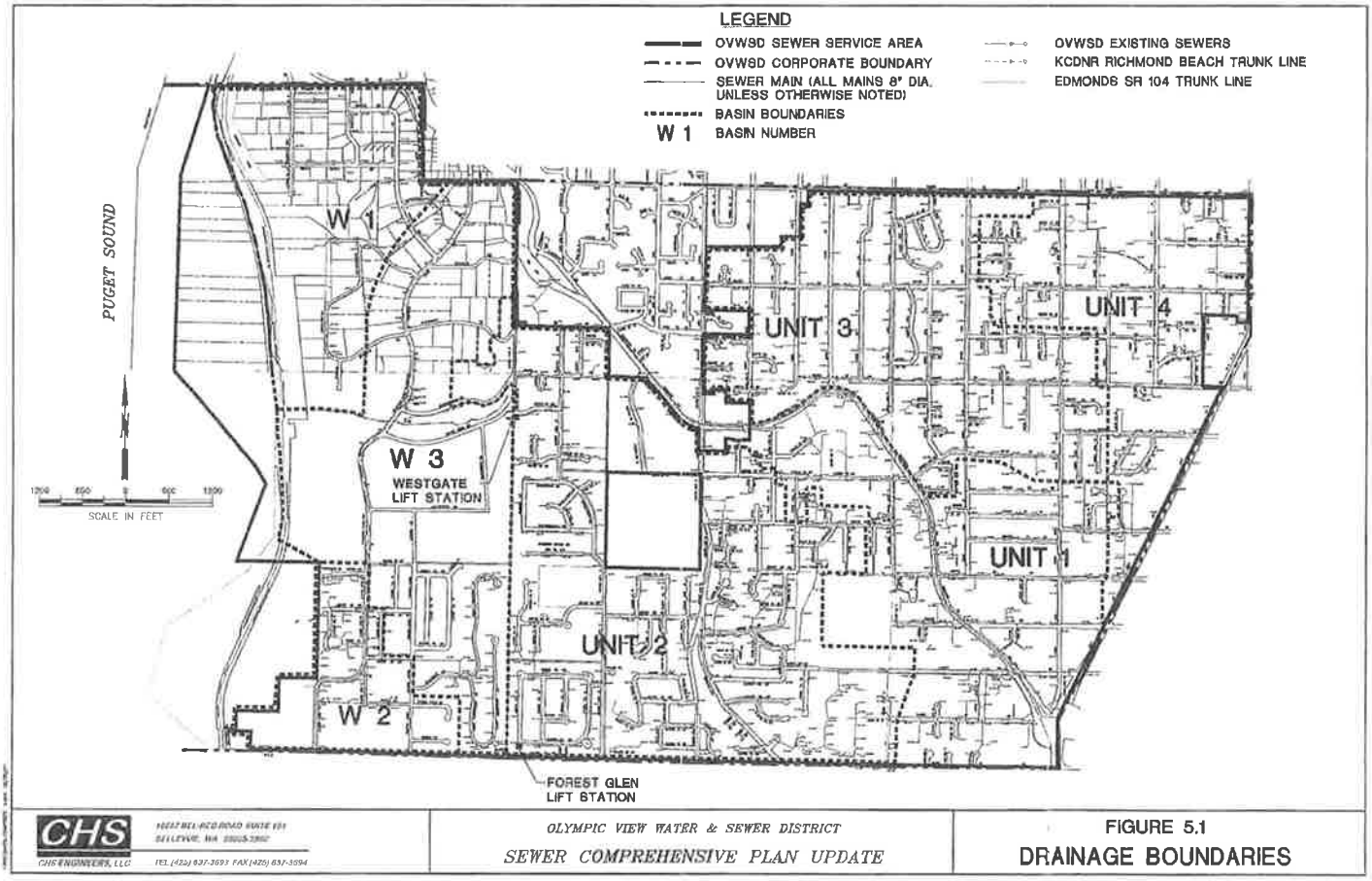
CORPORATE BOUNDARY & SERVICE AREA



CHS ENGINEERS, LLC

OLYMPIC VIEW WATER & SEWER DISTRICT
SEWER COMPREHENSIVE PLAN UPDATE

FIGURE 2.1
TOPOGRAPHY



CHS ENGINEERS, LLC

OLYMPIC VIEW WATER & SEWER DISTRICT

SEWER COMPREHENSIVE PLAN UPDATE

FIGURE 5.1

DRAINAGE BOUNDARIES

BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD
CENTRAL PUGET SOUND REGION
STATE OF WASHINGTON

RONALD WASTEWATER DISTRICT, et al.,

Petitioners,

and

KING COUNTY,

Intervenor,

v.

SNOHOMISH COUNTY,

Respondent,

and

OLYMPIC VIEW WATER AND SEWER DISTRICT AND TOWN OF WOODWAY,

Intervenor.

Case No. 16-3-0004c

FINAL DECISION AND ORDER

SYNOPSIS

Petitioners challenged Snohomish County Amended Motion No. 16-135 approving Olympic View Water and Sewer District's Sewer Plan June 2015 Amendment No. 2, expanding its service planning area to include Point Wells, as a de facto amendment to Snohomish County's Comprehensive Plan which violated GMA requirements for public participation, consistency, and [not more than] annual Plan updates. The Board concluded the County's action was a de facto amendment of its Plan and inconsistent with the 2015 Capital Facilities Plan, which incorporated Ronald Wastewater District's Comprehensive

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Sewer Plan and relied on Ronald as the service provider for Point Wells to meet GMA requirements for sewer facility adequacy. The action was remanded to the County for compliance action.

I. INTRODUCTION

Petitioners City of Shoreline (Shoreline) and Ronald Wastewater District (Ronald) challenged Snohomish County Amended Motion No. 16-135 approving the June 2016 Sewer Plan Amendment No. 2 for Olympic View Water and Sewer District (Olympic View). King County intervened on the side of Petitioners. The Town of Woodway (Woodway) and Olympic View intervened on the side of Respondent Snohomish County.

Procedural matters are detailed in Appendix A.

II. BURDEN OF PROOF AND STANDARD OF REVIEW

Pursuant to RCW 36.70A.320(1), comprehensive plans and development regulations, and amendments to them, are presumed valid upon adoption. This presumption creates a high threshold for challengers as the burden is on the petitioners to demonstrate that any action taken by the County is not in compliance with the GMA.

The Board is charged with adjudicating GMA compliance and, when necessary, invalidating noncompliant plans and development regulations.[1] The scope of the Board's review is limited to determining whether a County has achieved compliance with the GMA only with respect to those issues presented in a timely petition for review.[2] The GMA directs that the Board, after full consideration of the petition, shall determine whether there is compliance with the requirements of the GMA. The Board shall find compliance unless it determines that the County's action is clearly erroneous in view of the entire record before the Board and in light of the goals and requirements of the GMA. RCW 36.70A.320(3). In order to find the County's action clearly erroneous, the Board must be "left with the firm and

[1] RCW 36.70A.280; RCW 36.70A.302.
[2] RCW 36.70A.290(1).

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definite conviction that a mistake has been made." *Dep't of Ecology v. PUD 1, 121 Wn.2d 179, 201 (1993).*

III. BACKGROUND

This case is the latest in a series of cases involving Point Wells,[3] an unincorporated area of Snohomish County comprising 106 acres[4] located immediately North of the King/Snohomish County boundary. Point Wells is bordered to the south and west by Puget Sound shoreline. The upland side is bordered by a steep bluff and Woodway, in Snohomish County, is located at the top of the bluff. The City of Shoreline (Shoreline) is across the King County boundary to the south.[5] Due to the topography, vehicular access to Point Wells is via Shoreline. A railroad line bisects the sit running north and south. Historically, Point Wells was the site of petroleum-based industrial use, including an oil refinery, tank farm, and asphalt plant. More recently, Snohomish County, adjacent jurisdictions and property owners have been exploring urban development of the area, which boasts 180-degree views of Puget Sound.[6] A developer, BSRE Point Wells, LLP (BSRE), proposes a mixed-use urban center with more than 3000 residential units.[7]

The unique topography of the area presents both opportunity and problems: The sloping site's panoramic view creates redevelopment potential in Snohomish County, but in a situation in which road and service access comes through King County and Shoreline. Simplistically stated, the problem has been that the benefit may accrue in one county and the burden in another. The multiplicity of petitions to the Board over the last two decades are indicative of ongoing maneuvering to resolve a dispute between Shoreline, in King County, and Woodway, in Snohomish County, regarding which municipality should

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[3] See, e.g. *City of Shoreline, et al v. Snohomish County,* GMHB No. 09-3-0013c; *City of Shoreline, et al v. Snohomish County,* GMHB No. 10-3-0001c; *City of Shoreline, et al v. Town of Woodway, et al,* GMHB No. 01-3-0013; *BSRE Point Wells v. City of Shoreline,* GMHB No. 11-3-0007.
[4] County's Response Brief at 2.
[5] *See City of Shoreline, et al v. Snohomish County,* GMHB 09-3-0013c (Corrected Final Decision and Order, May 17, 2011) at 8-9.
[6] *Id.*
[7] County's Response Brief at 2.

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ultimately annex the area, provide transportation access, and provide urban services to Point Wells.[8]

Historically, King County provided sewage and wastewater collection to a petroleum plant on the Point Wells property.[9] The Ronald Wastewater District was formed in July 1951 under the name of Ronald Sewer District.[10] METRO (then a separate regional entity) provided transmission, treatment and disposal services by agreements with then King County Sewerage District 3 (KCSD3) and Ronald Wastewater District[11] (Ronald).[12] The KCSD3 area includes the northwest portion of unincorporated King County and the Point Wells Chevron facilities area of unincorporated Snohomish County. Portions of the KCSD3 system were built in 1939 and 1940. A sub-district was added in 1965.[13] The parties do not dispute that King County is the statutory successor to METRO.[14]

In 1981, the Legislature passed Substitute House Bill 352,[15] establishing the principle that the first in time is the first in right where districts overlap.

In 1984, King County began a process to divest itself of direct residential sanitary sewage collection and so transferred KCSD3 to Ronald in 1986.[16] Included was KCSD3's

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[8] *See City of Shoreline, et al v. Town of Woodway, et al,* GMHB No. 01-3-0013 (Final Decision and Order, November 28, 2001) at 9-10.

[9] The plant was operated by the Standard Oil Company, which later became Chevron USA. Ronald's Brief at 3.

[10] In 1992, the name was changed to Shoreline Wastewater Management District and later, in 2001, to the Ronald Wastewater District. Exhibit 19-20(1), Ronald 2010 CSP, p. 1-4.

[11] Then called Ronald Sewer District. Ronald's Brief at 3.

[12] King County's Brief at 2-3.

[13] Index Ex. 19-20(1), Ronald 2010 CSP, p. 1-5.

[14] RCW Ch. 35.58 allows counties to assume the functions of a metropolitan municipal corporation and to act in a regional capacity to maintain, operate and regulate metropolitan facilities for water pollution abatement, including sewage disposal. *See,* RCW 35.58.200; 35.58.020(12). King County assumed those functions from METRO in 1994.

[15] Substitute House Bill No. 352, Laws of Washington, 1981, Chapter 45, SEWER AND WATER DISTRICTS-SERVICE AND BONDING AUTHORITY, p. 211. SHB 352 reads in pertinent part:

> NEW SECTION. Section 1. It is the purpose of this act to reduce the duplication of service and the conflict among jurisdictions by establishing the principle that the first in time is the first in right where districts overlap ... ."

[16] Index Ex. 19-20(1), Ronald 2010 CSP, p. 1-5.

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Richmond Beach Sewer System, which served Point Wells and a small area in the SW corner of Woodway.[17]

Consistent with RCW 36.94.420, the King County Superior Court issued an order (1985 Transfer Order), effective in 1986, approving the transfer.[18] The 1985 Transfer Order provided that "the area served by the System *shall be annexed to and become a part of the District* on the effective date of the transfer."[19] King County asserts that, in reliance on these agreements and the Transfer Order, METRO and KCSD3 subsequently invested in the Richmond Beach Treatment plant (replaced by the Richmond Beach Pump station in 1988 at a cost of $40 Million to serve the City of Edmonds), the Hidden Lake Pump Station ($36 million in 2009), and public access improvements for a park at Richmond Beach Pump Station (as part of the Brightwater outfall construction).[20]

In 1991, Ronald entered into an agreement with Woodway to transport some of Woodway's sewage through Ronald's lines to King County facilities for pumping to the City of Edmonds treatment facility.[21]

In 1994, Snohomish County Ordinance No. 94-030 granted a utility franchise to Shoreline Wastewater Management District (now Ronald Wastewater District).[22] The franchise agreement authorizes the use of rights-of-way of certain county roads for the purposes of constructing, installing, and maintaining a sanitary sewer system.[23]

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[17] King County's Brief at 3-4.

[18] RCW 36.94.420 reads in pertinent part:

> **RCW 36.94.420 Transfer of system from county to water-sewer district—Annexation—Hearing—Public notice—Operation of system.**
> If so provided in the transfer agreement, the area served by the system shall, upon completion of the transfer, be deemed annexed to and become a part of the water-sewer district acquiring the system. …

[19] Index Ex. 19.10 (Italics added); King County's Brief at 3-4.

[20] King County's Brief at 4-5; Index Ex. 17, King Co. Wastewater Treatment Division comment letter to Council Chair Ryan.

[21] Index Ex. 19-20(1), Ronald 2010 CSP, p. 1-6.

[22] Index Ex. 19-23, Ordinance 94-030.

[23] Index Ex. 19-20(1), Ronald 2010 CSP, p. 1-7.

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In 1995, the City of Shoreline was incorporated and assumed responsibility for land use planning from King County for most of Ronald's service area.[24]

In 1996, the Legislature passed SSB 6091,[25] which provided in pertinent part:

> NEW SECTION. Sec. 302. Except upon approval of both districts by resolution, *a district may not provide a service within an area in which that service is available from another district or within an area in which that service is planned to be made available under an effective comprehensive plan of another district.*

In 2007, Snohomish County issued a legal opinion confirming that Ronald's corporate boundary includes Point Wells[26] and approved a Comprehensive Sewer Plan for Ronald that included Point Wells in Motion 07-550.[27] Snohomish County also approved Olympic View's 2007 Comprehensive Sewer Plan (Olympic's 2007 CSP) via Motion 07-550, which was subsequently amended for the first time in September 2009 via Motion 09-385.[28] Neither Olympic's 2007 CSP, nor its 2009 amendment, identified the Point Wells area as a planned area for sewer service by Olympic View. Instead, Olympic View identified Ronald as the service provider in the area.[29]

In 2009, Snohomish County approved a zoning change requested by BSRE to allow redevelopment at Point Wells[30] which was challenged before the Board. In 2011, the Board reversed and remanded the action in part because the County had not yet (in 2009) secured a specific commitment for sewer from any provider. [31] While the challenge was pending, the Snohomish County Council approved the Ronald Wastewater District's 2010

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[24] Index Ex. 19-20(1), Ronald 2010 CSP, p. 1-6.
[25] Substitute Senate Bill 6091, Laws of 1996, Chapter 230, Section 302.
[26] King County's Brief at 4; Exhibit 19.16.
[27] Index Ex. 19.14; Shoreline's Brief at 4.
[28] See, Ex. A to Petition for Review, Whereas Clause 1 and 2.
[29] Index Ex. 19.14, Fig. 1.3; Shoreline Brief at 3.
[30] *Shoreline III and Shoreline IV,* GMHB Coordinated Cases 09-3-0013c and 10-3-0011c (Final Decision and Order, April 25, 2011) at 3.
[31] *Id.* at 43-44:
> "The water and sewer districts now serving the industrial uses on the property have not adopted plans for the infrastructure necessary to support a residential population of perhaps over 6000."

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Comprehensive Sewer Plan (2010 CSP) via Motion 10-185 in April 2010,[32] identifying Ronald as the sewer provider to the Point Wells area.[33]

In 2012, Snohomish County issued a 2012 SEPA Addendum in response to the Board's 2011 remand that identified Ronald as the sewer service provider for the BSRE's Urban Center Development.[34] The 2015 Final EIS and the 2015 Comprehensive plan again identified Ronald as the sewer provider.[35]

On June 1, 2016, the Snohomish County Council adopted Motion 16-135, approving a Second Amendment to the 2007 CSP of the Olympic View Water and Sewer District (OVWSD Amendment), adding an Appendix H to the existing 2007 CSP to address sewer system improvements within the Point Wells area.[36]

Municipal Maneuvering

In 1998, Shoreline identified Point Wells in its comprehensive plan as a potential annexation area (PAA).[37] Three years later, Woodway amended its comprehensive plan to also identify Point Wells as a potential annexation area and Shoreline challenged Woodway's action before the Growth Board.[38] Both cities acknowledged that the overlapping PAA plans were inconsistent, each arguing that they had expressed their interest in annexation first. Snohomish County intervened, arguing that the two plans were not inconsistent because neither plan thwarted the other.[39] The Point Wells landowner, Chevron USA, intervened on the side of Shoreline, complaining that Woodway did not post

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[32] Index Ex. 12, Ex. 1; Shoreline's Brief at 3.
[33] Index Ex. 12, Ex. 1; The final *Whereas* in this Motion states that the CSP is consistent with the County's comprehensive plan and with the docketed action for Point Wells. Shoreline Brief at 3; Ronald's 2010 CSP includes plans to serve Point Wells. Index No. 13; Shoreline Brief at 3-4.
[34] Index Ex.19.21 at 1, 7, 78-81; Ronald's Brief at 8-9.
[35] Index Ex.19.20 at 14 (Figure 3.2-16); Ronald's Brief at 9.
[36] Index Ex. 8; Shoreline's Brief at 3.
[37] *See City of Shoreline, et al v. Town of Woodway, et al,* GMHB No. 01-3-0013 (Final Decision and Order, November 28, 2001).
[38] *Id.*
[39] *Id.*

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any notices at Point Wells or notify Chevron, the landowner.[40] The Growth Board rejected Snohomish County's argument and concluded that Woodway's plan was inconsistent with that of Shoreline; but, having found Woodway's plan amendment noncompliant, the Board declined to resolve Chevron's notice issue.[41] Snohomish and Woodway appealed to Snohomish County Superior Court, which reversed the Board and declined to grant relief to Chevron. Shoreline appealed to the Court of Appeals, which found "no reason in logic why land that could *potentially* be annexed by Shoreline cannot also be *potentially* annexed by Woodway."[42]

Thus, although GMA does not allow two cities to have concurrent jurisdiction over the same territory, Division I appellate case law holds that two cities *simultaneously planning for the possibility* of annexing the same territory does not violate GMA.[43]

Meanwhile in 2002, Ronald entered into an interlocal operating agreement (2002 Operating Agreement) with the City of Shoreline that set forth terms for Shoreline's future assumption of Ronald. Shoreline planned to assume jurisdiction over Ronald by October 2017[44] under RCW 35.13A.030.[45] Under RCW 35.13A.020, a city assuming a wastewater district may assume all property, rights, assets and taxes levied but not collected and, pursuant to RCW 35.13A.050, may also assume responsibility to serve the territory of the district outside the city's boundaries.[46] If Shoreline elects to assume ownership and

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[40] *Id.*
[41] *Id.*
[42] *Chevron U.S.A. Inc. v. Hearings Bd.,* 123 Wn. App. 161, 163, 168, 93 P.3d 880 (Div. 1, June 1, 2004); Ronald's Brief at 7.
[43] *Id.*
[44] Ronald's Brief at 5-6.
[45] RCW 35.13A.030 reads in pertinent part:

> Whenever a portion of a district equal to at least sixty percent of the area or sixty percent of the assessed valuation of the real property lying within such district, is included within the corporate boundaries of a city, the city may assume by ordinance the full and complete management and control of that portion of the entire district not included within another city, whereupon the provisions of RCW 35.13A.020 shall be operative; or the city may proceed directly under the provisions of RCW 35.13A.050.

[46] RCW 35.13A.050 provides that, upon assumption of a wastewater district, the assuming city "shall for the economically useful life of any [facilities designed to serve territory of the former district lying outside the city]

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operation of facilities that currently serve Point Wells, RCW 35.13A.050 requires that Shoreline make available sufficient capacity to continue serving the Point Wells territory.[47]

However, former RCW 56.08.065, repealed and replaced by Title 57 RCW in 1996, required approval for a wastewater district's provision of sewer service beyond the district's boundaries to be subject to review by the boundary review board.[48] To that end, Shoreline petitioned the Snohomish County Boundary Review Board (Snohomish BRB) in 2014 and Snohomish County, Woodway, and Olympic View, which provides wastewater service to portions of Woodway, appeared before the Snohomish BRB in objection to Shoreline's service boundary request.[49] The Snohomish BRB denied the expansion.[50] The parties disagree as to whether the denial is final.[51] Olympic View points to the Superior Court's dismissal of Shoreline/Ronald's appeal of the BRB decision pursuant to CR 41, wherein Shoreline/Ronald jointly stipulated to dismissal, as barring future appeal of the 2014 BRB decision. At the Hearing on the Merits, Shoreline explained that Shoreline and Ronald chose not to pursue the appeal because it is possible to reapply to the BRB after a year. Clarification of the service area conflict is the subject of a Declaratory Judgment action filed by Ronald in Superior Court and is not within the jurisdiction of the Board.

IV. BOARD JURISDICTION

The Board finds the Petition for Review was timely filed, pursuant to RCW 36.70A.290(2). The Board finds the Petitioner has standing to appear before the Board, pursuant to RCW 36.70A.280(2)(a) and (b).

The Boards were created by the Legislature to determine, when there is a challenge, whether plans and regulations adopted by cities and counties comply with the Growth

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make available sufficient capacity therein to serve the sewage or water requirements of such territory, … at a rate charged to the municipality being served which is reasonable to all parties."

[47] *Id.*

[48] County's Response Brief at 7-9.

[49] Index Ex. 39, Transcript.

[50] Index Ex. 40, attachment to Superior Court appeal.

[51] Olympic View's and Woodway's Brief at 7.

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Management Act as applied to comprehensive planning. The Growth Management Act at RCW 36.70A.280 carefully defines the matters subject to the Board's review:

> (1) The growth management hearings board shall hear and determine *only* those petitions alleging … (a) that … a state agency, county or city planning under [Title 36.70A] is not in compliance with the requirements of [the GMA], [the SMA] as it relates to the adoption of shoreline master programs or amendments thereto, or [the SEPA]… .[52]

Title 36.94 and Title 57 RCW

Chapter 36.94 and Chapter 57 RCW govern wastewater. The parties' briefs and arguments at the Hearing on the Merits include considerable discussion of Chapter 57 RCW. Because the Board's review is limited to determining consistency with GMA plans and regulations, it does not have jurisdiction to decide the Title 57 issue; but, the Board notes that the importance of the GMA's coordinated planning mandate is acknowledged in the related statute, which requires conformity with the comprehensive plan.[53]

De Facto Amendment

The Growth Management Hearings Board was established by the legislature and its jurisdiction is limited as established in statute. The courts have explained: "GMHBs have limited jurisdiction to decide only petitions challenging comprehensive plans, development regulations, or permanent amendments to comprehensive plans or development regulations."[54] Thus, "unless a petition alleges that a comprehensive plan or a development regulation or amendments to either are not in compliance with the requirements of the GMA, [the Board] does not have jurisdiction to hear the petition."[55]

On its face, Amended Motion 16-135 does not purport to amend the Snohomish County comprehensive plan or development regulations. However, in *Alexanderson v. Clark*

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[52] Emphasis added.

[53] RCW 57.16.040(3) reads in pertinent part:

> … In approving or not approving the proposed action, the county legislative authority shall consider the following criteria:
> (a) Whether the proposed action in the area under consideration is in compliance with the development program that is outlined in the county comprehensive plan, or city or town comprehensive plan where appropriate, and its supporting documents.

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County,[56] the court held that actions taken by local governments that do not explicitly purport to amend comprehensive plans or development regulations but that, "in effect, supersede and amend the comprehensive plan" are *de facto* amendments that do fall within the Board's GMA jurisdiction.[57]

> Alexanderson et al. contend that the MOU is a de facto amendment to the County's comprehensive plan because it requires the County to act inconsistently with planning policies by providing water to the subject land. Because the MOU has the effect of amending the comprehensive plan, they argue that the Board had jurisdiction to hear its petition. We agree.[58]

In *Alexanderson,*[59] Clark County had entered into an agreement (the MOU) with the Cowlitz Indian Tribe. The appellate court found that in the MOU, the county agreed to provide water to the subject land. In the comprehensive plan, the county agreed not to provide water at a level inconsistent with the comprehensive plan. The Tribe proposed to use the land in a manner inconsistent with the current land use designation of the subject land. The Court of Appeals held:

> Because the MOU has the legal effect of amending the plan, just as if the words of the plan itself have been changed to mirror the MOU, the MOU was a *de facto* amendment and the Board has jurisdiction.[60]

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[54] *Woods v. Kittitas County*, 162 Wn.2d 597, 609, 174 P.3d 25 (2007).
[55] *Wenatchee Sportsmen Assoc. v. Chelan County*, 41 Wn.2d 169, 178, 4 P.3d 123 (2000); *BD Lawson Partners, LP v. Black Diamond,* Order of Dismissal, GMHB No. 14-3-0007 (August 18, 2014) at 6-7 ("Board has consistently rejected challenges to city or county resolutions or ordinances that do not enact plans or regulations but simply constitute part of the decision process").
[56] *Alexanderson v. Board of Clark County Commissioners*, 135 Wn. App. 541, 549-50, 144 P.3d 1219 (Div. 2 2006).
[57] See also *Your Snoqualmie Valley v. City of Snoqualmie*, Order on Motions, GMHB No. 11-3-0012 (March 8, 2012) at 12-13 (pre-annexation agreement in direct contradiction of city comprehensive plan policies was a *de facto* amendment).
[58] *Alexanderson v. Board of Clark County Commissioners*, 135 Wn. App. 541, 549-50, 144 P.3d 1219 (Div. 2 2006).
[59] *Alexanderson v. Bd. of Comm'rs*, 135 Wn. App. 541, 144 P.3d 1219, 2006 Wash. App. LEXIS 2285 (Wash. Ct. App. 2006).
[60] *Id.* at 550. (Emphasis added).

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Later, in *Alexanderson, et al. v. City of La Center*,[61] the Board explained the necessity of an additional step in determining its jurisdiction if, as here, a challenged action is alleged to override provisions of a comprehensive plan.

Thus Issue One, which asks whether Amended Motion No. 16-135 *a de facto* amendment to the Snohomish County Comprehensive Plan, and Issue Two, which asks whether Amended Motion 16-135 is inconsistent with its Comprehensive Plan, are threshold decisions pertaining to the Board's jurisdiction over Petitioners' challenge.

As discussed below, **the Board concludes** that, under RCW 36.70A.280(1), Amended Motion 16-135 is a *de facto* amendment such that the Board has jurisdiction over the subject matter of the petitions in this consolidated case.

V. ANALYSIS AND DISCUSSION

Issue One: Is Amended Motion No. 16-135 a de facto amendment to the Snohomish County Comprehensive Plan because it approves an amendment to the Olympic View Water & Sewer District Comprehensive Sewer Plan (previously approved by Motion No. 07-550 and Motion 09-385), which has been incorporated into the Snohomish County Comprehensive Plan and relied upon by Snohomish County to fulfill its GMA-mandated planning for capital facilities and utilities?

Applicable Law

Managing growth in the Central Puget Sound region is governed exclusively under Chapter 36.70A RCW.[62] The legislative findings in RCW 36.70A.010 include a statement stressing the need for coordinated, planned growth.

RCW 36.70A.020 sets forth the GMA planning goals that guide the development of comprehensive plans and reads, in pertinent part:

> (12) Public facilities and services. Ensure that those public facilities and services necessary to support development shall be adequate to serve the

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[61] *Alexanderson, et al. v. City of La Center*, GMHB No. 12-2-0004 (Order on Dispositive Motions, May 4, 2012) at 11.

[62] *See, West Seattle Defense Fund v. City of Seattle (WSDF IV)*, GMHB No. 96-3-0033 (Final Decision and Order, March 24, 1997) at 11.

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development at the time the development is available for occupancy and use without decreasing current service levels below locally established minimum standards.

RCW 36.70A.070 establishes the required elements of comprehensive plans. Required elements include a capital facilities plan[63] and a utilities element:[64]

> Each comprehensive plan shall include a plan, scheme, or design for each of the following:
> ***
> (3) A capital facilities plan element consisting of: (a) An inventory of existing capital facilities owned by public entities, showing the locations and capacities of the capital facilities; (b) a forecast of the future needs for such capital facilities; (c) the proposed locations and capacities of expanded or new capital facilities; (d) at least a six-year plan that will finance such capital facilities ...
> (4) A utilities element consisting of the general location, proposed location, and capacity of all existing and proposed utilities, ...

Related law: Under RCW 57.16.010, a wastewater district must adopt a general comprehensive plan for the type or types of facilities the district proposes to provide before ordering any improvements or submitting to vote any proposition for incurring any indebtedness.[65] A wastewater district's Comprehensive Sewer Plan (CSP) is a long-term plan for its provision of a sewer system suitable and adequate for present and reasonably foreseeable future needs of the sewer district.[66]

Positions of the Parties

Shoreline asserts that an amendment to a sewer plan relied upon in the County's Comprehensive Plan is an amendment to the Comprehensive Plan. In response, Snohomish advances the theory that Olympic View's CSP *as amended by the challenged*

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[63] RCW 36.70A.070(3).
[64] RCW 36.70A.070(4).
[65] "Before ordering any improvements or submitting to vote any proposition for incurring any indebtedness, the district commissioners shall adopt a general comprehensive plan for the type or types of facilities the district proposes to provide." RCW 57.16.010.
[66] RCW 57.16.010(2); Shoreline's Brief at 3.

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action is not being relied upon or incorporated by the County for purposes of GMA compliance *yet* and thus cannot be considered a "*de facto*" amendment.[67]

Both parties cite to the Board's decision in *Fallgatter V,*[68] in which the City of Sultan's adoption of a General Sewer and Water Plan was not concurrent with a comprehensive plan amendment and used population targets that differed from the targets adopted in its Comprehensive plan. The City argued that the Sewer Plan was adopted under other statutes and thus did not require the use of GMA population targets,[69] and that external functional plans, such as the sewer plan and transportation improvement plan, were merely "management" documents rather than GMA planning activities.[70] Noting that a central concept of the Growth Management Act was coordinating urban growth with the availability of urban infrastructure, the Board found that the Sewer Plan "did not comply with the RCW 36.70A.120 mandate to make its sewer planning decisions in conformity with its comprehensive plan."[71]

Snohomish County concurs that Sultan's Sewer Plan was found non-compliant because the City (1) was relying on the Sewer Plan to meet GMA requirements, and (2) the Sewer Plan was based on different population targets than the City's comprehensive plan and thus inconsistent.[72] It then asserts that the Olympic View CSP amendment is not inconsistent with its currently effective (2015) Comprehensive Plan because it has not incorporated the amended CSP into the Comp Plan, citing *Ludwig*[73] for the proposition that "it is only when a City or County adopts a sewer district's external functional plan to achieve compliance with RCW 36.70A.070(3) [i.e, capital facilities plan element] that compliance

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[67] County's Response Brief at 26 (emphasis added).
[68] *Fallgatter v. Sultan (Fallgatter V),* GMHB No 06-3-0003 (Final Decision and Order, June 29, 2006).
[69] *Id.* at 11.
[70] *Id.* at 12.
[71] *Id.*at 11, 15-16.
[72] County's Response Brief at 21-22.
[73] This is actually the coordinated case referenced on the Board's website as *Campbell, et al v. San Juan County*, GMHB No. 05-2-0022c (Compliance Order - Eastsound UGA, January 30, 2009). It includes *Klein v. San Juan County,* GMHB No. 02-2-0008, and *Ludwig v. San Juan County,* GMHB No. 05-2-0019c.

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with GMA is triggered."[74] In defense of amending Olympic Views CSP prior to the next plan update, Snohomish County and Olympic View further argue that Ronald's "future ability to provide sewer service to the Point Wells area" is uncertain[75] because Ronald "is going out of business in less than one year."[76]

Ronald argues on reply that the Board, in *Fallgatter V,* rejected the argument that external functional plans, relied upon by a jurisdiction to comply with the GMA, are not part of its comprehensive plan, finding these plans are part of the connected structure of comprehensive planning.[77] Shoreline argues *Ludwig* simply acknowledges that a special purpose district's plan can be relied upon by a GMA jurisdiction and, when it is relied upon, there must be compliance with the GMA, including consistency, and that *Fallgatter V* does not distinguish according to whether the utility's plan was incorporated at the time.

Shoreline further argues that endorsing Respondent/Intervenors' argument would allow cities/counties to adopt "hidden" amendments outside of the GMA's parameters so long as the amendment didn't create "actual conflict."[78]

Discussion

The Board long ago addressed the question of whether "specialized plans" or external "functional" plans must be integrated with comprehensive plans. In *WSDF III*[79] the Board held:

> [T]he GMA has removed the discretion of cities and counties to undertake new localized land use policy exercises disconnected from the city-wide, regional policy and state-wide objectives embodied in the local comprehensive plan."

Since the Board's 1996 decision in *WSDF IV,*[80] it has been well-settled that:

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[74] County's Response Brief at 23.
[75] County's Response Brief at 32.
[76] Olympic View's and Woodway's Brief at 14.
[77] Ronald's Reply Brief, Section III(A).
[78] Shoreline's Reply at 5.
[79] *WSDF IV* at 10
[80] *West Seattle Defense Fund v. City of Seattle (WSDF IV),* GMHB No. 96-3-0033 (Final Decision and Order, March 24, 1997) at 28. (Emphasis omitted).

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> ...the results or conclusions of the City's capital facility needs analysis (i.e., determinations of adequacy, or identification, location, capacity and six-year financing of new or expanded capital facilities) must be contained directly in the comprehensive plan or incorporated CIP. ... Additionally, the Plan must also cite, reference or otherwise identify and indicate the source document(s) containing the required capital facility needs analysis.

Rejecting a city's characterization of its Water and Sewer Plan as a "management" document rather than GMA planning activity, in *Fallgatter V* the Board reiterated that "functional" plans must be consistent with a city's comprehensive plan:[81]

> The City of Sultan's Water and Sewer Plans ... do not exist in a vacuum; they are part and parcel of the City's system for accommodating and managing growth under the GMA.

Similarly, it is apparent that Snohomish County has met the RCW 36.70A.070 requirements in regard to sewer and water districts by including reference to external district plans as the following excerpt from the County's Capital Facilities Plan indicates:

> The CFP supports other comprehensive plan elements and helps achieve coordination and consistency among the many plans of other public agencies for capital improvements within the planning area, including:
>
> - Other elements of the comprehensive plan (notably, the General Policy Plan and the Transportation Element);
> - Plans of other local governments, especially in urban growth areas (UGAs);
> - **Plans of special districts (i.e.,** schools, water, **sewer);** and
> - Plans for capital facilities of state and regional significance.
>
> This CFP draws information from the plans of many county and non-county agencies that meet a variety of statutory requirements. These plans are also prepared and developed over a variety of timeframes.[82]

Snohomish County's 2015 Capital Facilities Plan, Section 2.3 – Public Wastewater Systems, states:

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[81] *Fallgatter v. Sultan (Fallgatter V),* GMHB No. 06-3-0003 (Final Decision and Order, June 29, 2006).
[82] Core document: Snohomish County 2015 Capital Facilities Plan, at 4 (emphasis added).

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Detailed information about projected future needs for a particular system can be obtained from the comprehensive system plan for each provider.

Finding of Fact: Snohomish County incorporates by reference the approved Comprehensive Sewer Plans of wastewater service providers relied upon by Snohomish County to fulfill its GMA planning requirements, making them part of the Capital Facilities Element of its Comprehensive Plan.

Ronald CSP

Snohomish County Council approved Ronald's 2010 Comprehensive Sewer Plan (2010 CSP) via Motion 10-185 in April 2010, identifying Ronald as the sewer provider to the Point Wells area.[83] Ronald's 2010 CSP includes plans to serve the urban center development at Point Wells. [84] A 2015 FEIS for the BSRE's Urban Center Development and the 2015 Comp Plan again identified Ronald as the sewer provider.[85] Snohomish County relied upon Ronald's provision of sewer service to the Point Wells area when preparing the 2015 Comprehensive Plan Update and their Docket XII amendments in 2012[86] and accepted Ronald's Certificate of Sewer Availability for the mixed-used residential development planned for Point Wells.[87]

Finding of Fact: Snohomish County's 2015 Comprehensive Plan relies on Ronald to comply with GMA requirements to ensure adequate public wastewater facilities *for Point Wells.*

Olympic View CSP

Snohomish County approved Olympic View's 2007 Comprehensive Sewer Plan (Olympic's 2007 CSP) via Motion 07-550, which was subsequently amended for the first

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[83] Index Ex. 19.15, Motion 10-185; Shoreline's Brief at 3, 9.
[84] Index Ex. 13; Shoreline's Brief at 3-4.
[85] Index Ex. 19.20 at 14; Ronald's Brief at 9.
[86] Index Ex. 19.20, Fig. 3.2.16; Index 21; Shoreline Brief at 4.
[87] Index Ex. 19.17; Shoreline's Brief at 4.

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time in September 2009 via Motion 09-385.[88] Neither Olympic 2007 CSP, nor its 2009 amendment, identified the Point Wells area as a planned area for sewer service by Olympic View. Instead, Olympic View identified Ronald as the service provider in the area.[89]

Finding of Fact: In adopting its 2015 Comprehensive Plan, Snohomish County relied on Olympic View's CSP to comply with GMA requirements to ensure adequate public wastewater facilities in portions of Snohomish County *other than Point Wells*.

Here, the County has previously approved Olympic's CSP and relied on it to satisfy its GMA obligation to ensure adequate public facilities. Amended Motion 16-135 amended Olympic View's CSP. Because Olympic View's CSP is a functional plan relied upon by Snohomish County to fulfill its GMA planning requirements and referenced in the County's Capital Facilities Plan, the Council effectively amended the Capital Facilities Element of its Comprehensive Plan in approving the CSP amendment.

Snohomish County's primary argument is that, despite adoption of Amended Motion 16-135, it has not formally adopted the amended version of Olympic View's CSP so it is not relying on the amended portion *yet* and therefore, it doesn't matter if Olympic View's updated CSP conflicts with Ronald's.[90] The problem with the County's reasoning was addressed by the Board in *Fallgatter V*:

> By **adopting** Water and **Sewer plans which are inconsistent with and do not conform to the Comp Plan ..., and then proposing to amend its Comp Plan to resolve these inconsistencies, the City has turned the GMA process on its head.**
> *** If Sultan's Water and Sewer Plans had been properly based on GMA-adopted population targets and service areas, adoption of those ordinances using the regular City public notice and hearing process...would most likely be adequate to satisfy the public process procedures under the relevant statues. However, **to the extent the City relies on those plans to fulfill GMA requirements,** such as facility inventories, needs assessment, identifying priorities and financing options, **the City must adhere to the GMA's public participation requirements.** Such **functional plans are intended to**

[88] See, Ex. A to Petition for Review, Whereas Clause 1 and 2.
[89] Index Ex. 19.14, Fig. 1.3; Shoreline Brief at 3.
[90] County's Response Brief at 27.

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***implement* GMA comprehensive plans, not *amend* them**. When a Water or Sewer Plan is revised or updated, if it is relied upon to provide required components of the Comp Plan, it is effectively a Comp Plan amendment. As such, the pending and proposed amendments should be docketed for review during the annually-scheduled Compo Plan amendment schedule. Changes to capital facilities schedules arising from the update of functional plans could also be folded into the City's annual budget review cycle. Under either option, conformity, consistency and coordination among the Comp Plan and the Water and Sewer Plans is maintained.

As was the case in *Fallgatter V*, the problem with the County's action is that: (1) Snohomish does rely on both Ronald and Olympic Views CSPs to implement its comprehensive plan; and (2) the two CSPs now conflict.

Conclusion of Law: Amended Motion 16-135 is a *de facto* amendment to the Snohomish County Comprehensive Plan.

Issue Two: Did Snohomish County, in passing Amended Motion No. 16-135, fail to comply with RCW 36.70A.070 Preamble, RCW 36.70A.070(3), and RCW 36.70A.070(4) because it results in an internally inconsistent comprehensive plan by having two (2) competing, overlapping comprehensive sewer plans for the Point Wells area, something that is prohibited by Title 57 RCW, which creates inconsistencies within the Capital Facilities Plan and Utilities Element of the Snohomish County Plan, since the Comprehensive Sewer Plans for Ronald and Olympic View that were previously approved by the County are part of the County's Comprehensive Plan and the Comprehensive Plan, including the Capital Facilities Plan, recognizes Ronald as the provider of sewer service to Point Wells?

Applicable Law

RCW 36.70A.070 states that "The plan shall be an internally consistent document and all elements shall be consistent with the future land use map.

RCW 36.70A.070 establishes the required elements of comprehensive plans. Required elements include a capital facilities plan[91] and a utilities element:[92]

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[91] RCW 36.70A.070(3).
[92] RCW 36.70A.070(4).

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> Each comprehensive plan shall include a plan, scheme, or design for each of the following:
> ***
> (3) A capital facilities plan element consisting of: (a) An inventory of existing capital facilities owned by public entities, showing the locations and capacities of the capital facilities; (b) a forecast of the future needs for such capital facilities; (c) the proposed locations and capacities of expanded or new capital facilities; (d) at least a six-year plan that will finance such capital facilities ...
> (4) A utilities element consisting of the general location, proposed location, and capacity of all existing and proposed utilities, ...

Positions of the Parties

Ronald complains that Olympic View's 2016 CSP Amendment expanding Olympic View's service area is inconsistent with pre-existing provisions in the County's Comprehensive Plan, including the Capital Facilities Plan map showing Ronald as sewer provider in Point Wells.[93] Snohomish County acknowledges that the Public Wastewater Systems map (Figure 7) of Amended Ordinance 14-135 adopting the 2015 Capital Facilities Plan identified discrete service areas for Ronald and Olympic View with Ronald identified as serving the Point Wells area,[94] but states Appendix B, Figure 7 of the CFP was revised as codified to replace Figure 7 with "a diagram that simply distinguished between the boundaries of municipal districts and special purpose districts without individually labeling each."[95] Shoreline asserts that the generic Figure 7 was never adopted and the County cannot rely on it but that, even if the plan was somehow valid, taking Ronald's name off the plan does not change the fact that Ronald is the recognized provider of sewer for the area, something that the County does not dispute.[96] The Board agrees.

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[93] Ronald's Brief at 16-17.
[94] Ronald's Reply Brief at 3; County Brief at 24; Index Ex. 47.1, Snohomish County Amended Ordinance No 14-135, Appendix B, Figure 7.
[95] County's Response Brief at 24, fn. 2; Index Ex. 47.2, Snohomish County Amended Ordinance No 14-135, Appendix B, Figure 7.
[96] *See* Shoreline Request for Official Notice (November 29, 2016); Shoreline's Reply Brief at 3.

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Discussion

Amended Motion 16-135 amended Olympic View's CSP to add Appendix H to reflect Olympic View's provision of wastewater services within the Point Wells area.[97] The County's recodification of Figure 7, lumping Ronald and Olympic View service areas together under one color code *on the map* (so that the existence of overlapping service areas *in the field* isn't readily apparent), in no way negates an actual conflict between the now overlapping service areas. Nor does it comport with the Board's holding in *Fallgatter V* that internal consistency requirements apply with equal force to functional plan amendments:[98]

> At the very least, such functional plans must be consistent with [the local jurisdiction's] comprehensive plan.

Finding of Fact: Olympic View's amended CSP provides that Olympic View will plan to provide sewer service to the Point Wells area.

Finding of Fact: Ronald's CSP designates Ronald as the wastewater service provider for the Point Wells area and a portion of the Town of Woodway for the purpose of complying with GMA requirements.[99]

Thus, with this amendment, the County's Capital Facility Plan now incorporates two functional sewer plans that identify two wastewater districts for the provision of sanitary sewer within the Point Wells area.

Finding of Fact: Adoption of Amended Motion 16-135 amended the Olympic View CSP relied upon by Snohomish County to meet its GMA comprehensive plan requirements such that its service area is partially coincident with the service area designated in the Ronald CSP on which the County also relies.

Distinguishing the present conflict from the appellate decision in *Chevron*, Ronald observes that, in *Chevron*, the King County policy prohibiting overlapping *potential* annexation areas was not binding on Woodway, and Woodway's use of the phrase did not

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[97] Index Ex. 5.
[98] *Fallgatter V,* FDO at 12; Ronald's Brief at 16.
[99] *See* Index Ex. 19.12, Ronald's 1990 CSP, Chapter 7 pp. 2-3; Shoreline's Brief at 4.

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carry the same policy implications as it would for a jurisdiction subject to King County policies.[100] In contrast, here both Ronald and Olympic View are subject to the same Snohomish County Comprehensive Plan. Because Olympic View's 2016 CSP Amendment amended the Snohomish Comp Plan *de facto*, Snohomish County's Comprehensive plan now relies on both Olympic View and Ronald to meet GMA requirements to ensure adequacy of public water and sewer facilities within the County, with duplicative service boundaries in portions of Woodway and the urban center development of Point Wells. The resulting designation of sewer service areas in which planning to meet GMA adequacy requirements is assigned to two different entities is an actual, current conflict and not merely a potential, future conflict.

Conclusion of Law: Adoption of Amended Motion 16-135 resulted in internal inconsistencies between functional sewer plans incorporated in Snohomish County's 2015 Capital Facilities Plan.

Conclusion of Law: Amended Motion 16-135 does not comply with RCW 36.70.070 Preamble and RCW 36.70A.070(3) and (4).

The Board finds and concludes that Petitioners have met their burden to prove that the City's adoption of Amended Motion 16-135 does not comply with the requirement of RCW 36.70A.070 that comprehensive plans be internally consistent.

Issue Three (Part of Ronald Issue 3.2)
Does Amended Motion No. 16-135 fail to comply with the GMA's internal consistency requirement in RCW 36.70A.070 (Preamble) and with the GMA's capital facilities planning requirements in RCW 36.70A.070(3) because the Olympic View Amendment is inconsistent with the Utilities Chapter of the County's General Policy Plan, which emphasizes the need for coordination of external functional plans and requires consistency among district utility plans and consistency between such plans and the County's Comprehensive Plan through objectives such as Objective UT 1.B ("Achieve and maintain consistency between utility system expansion plans and planned land use patterns") and UT Policy 1.B.2 ("The county shall maintain consistency between district utility plans and the county's comprehensive plan");

[100] Ronald's Brief at 16-17.

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Goal UT 3 ("Work with cities and special districts to produce coordinated wastewater system plans for both incorporated and unincorporated areas within UGAs that are consistent with the land use element and city plans"); and Objective UT 3.A ("Utilize wastewater system plans as a basis for orderly development or expansion within UGAs in accordance with the Countywide Planning Policies")?

Applicable Law

RCW 36.70A.070, as above.

Snohomish General Plan Objective UT 1.B - Achieve and maintain consistency between utility system expansion plans and planned land use patterns.[101]

Snohomish General Plan UT Policy 1.B.2 - The county shall maintain consistency between district utility plans and the county's comprehensive plan.[102]

Snohomish General Plan Goal UT 3 - Work with cities and special districts to produce coordinated wastewater system plans for both incorporated and unincorporated areas within UGAs that are consistent with the land use element and city plans.[103]

Snohomish General Plan Objective UT 3.A - Utilize wastewater system plans as a basis for orderly development or expansion within UGAs in accordance with the Countywide Planning Policies.[104]

Positions of the Parties

King County observes that the Utilities Chapter of Snohomish County's General Policy Plan recognizes METRO as an "important service provider" that "provides wastewater treatment for sections of south Snohomish County."[105] King County echoes Ronald's argument that the stated purpose of Amended Motion 16-135, which is to provide for future service to the Point Wells area by Olympic View, is inconsistent with the Utilities Chapter of Snohomish County's General Policy Plan, which emphasizes the need for consistency

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[101] Snohomish County General Policy Plan – Utilities, p. UT-2.
[102] *Id.*
[103] Snohomish County General Policy Plan – Utilities, p. UT-6.
[104] *Id.*
[105] General Policy Plan – Utilities, p. UT-5.

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among utility systems and the planning documents of provider agencies, as well as the importance of coordinated wastewater system planning and orderly development and expansion of sewers.[106] Thus King County argues that Amendment 2 is inconsistent with Objective UT 1.B, requiring consistency between utility system expansion plans and planned land use patterns, and UT Policy 1.B.2, requiring consistency between district utility plans and the county's comprehensive plan.

As the Board found under Issue Three, Amended Motion 16-135 amended the Olympic View CSP, on which Snohomish County relies, such that its service area is partially coincident with the service area designated in the Ronald CSP, on which Snohomish County also relies. The result is internal inconsistency between functional sewer plans incorporated in Snohomish County's 2015 Capital Facilities Plan.

Conclusion of Law: Adoption of Amended Motion 16-135 creates internal inconsistency between Snohomish County's 2015 Capital Facilities Plan and General Plan Policy UT 1.B.2.

The Board finds King County and Petitioners have met their burden to prove that the City's adoption of Amended Motion 16-135 does not comply with the requirement of RCW 36.70A.070 that comprehensive plans be internally consistent.

King County does not explain how Olympic View's amended CSP creates inconsistency between utility expansion plans and land use patterns. A bare assertion does not suffice to meet Petitioners' burden. King County further asserts that Olympic View's amended CSP does not allow for coordinated wastewater system plans or the orderly development of wastewater systems in the Point Wells area, as emphasized in Goal UT 3 and Objective UT 3.A, but does not support the assertion with legal argument.

The Board finds King County and Petitioners have not carried their burden to show that Amended Motion 16-135 is inconsistent with Policy UT 1.B, Goal UT 3 and Objective UT 3.A in violation of RCW 36.70A.070.

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[106] King County's Brief at 6-7.

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Issue Four (Shoreline Issue 4; Ronald Issue 3.1)
Did Snohomish County, in passing Amended Motion No. 16-135, fail to comply with the GMA's public participation goals and requirements, including RCW 36.70A.020(11), 36.70A.035, 36.70A.070 Preamble, 36.70A.130(2)(a), and 36.70A.140, and failed to be guided by RCW 36.70A.020(11) by failing to appropriately notice Amended Motion No. 16-135 as a comprehensive plan amendment and provide the necessary public participation mandated by the GMA for comprehensive plan amendments when the Motion amends an external functional plan upon which the County has relied to fulfill GMA requirements?

Applicable Law

RCW 36.70.020(11) requires that development and adoption of comprehensive plans for counties planning under 36.70A.040 shall "[e]ncourage the involvement of citizens in the planning process and ensure coordination between communities and jurisdictions to reconcile conflicts."

RCW 36.70A.070 Preamble provides that "A comprehensive plan shall be adopted and amended with public participation as provided in RCW 36.70A.140.

RCW 36.70A.140 further requires procedures that ensure public participation:

> Each county and city that is required or chooses to plan under RCW 36.70A.040 shall establish and broadly disseminate to the public a public participation program identifying procedures providing for early and continuous public participation in the development and amendment of comprehensive land use plans and development regulations implementing such plans. The procedures shall provide for broad dissemination of proposals and alternatives, opportunity for written comments, public meetings after effective notice, provision for open discussion, communication programs, information services, and consideration of and response to public comments. …

RCW 36.70A.035 establishes notice requirement to promote public participation "include notice procedures that are reasonably calculated to provide notice … of proposed amendments to comprehensive plans and development regulation."

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RCW 36.70A.130(2)(a) dictates that:

> Each county and city shall establish and broadly disseminate to the public a public participation program consistent with RCW 36.70A.035 and 36.70A.140 that identifies procedures and schedules whereby updates, proposed amendments, or revisions of the comprehensive plan are considered by the governing body of the county or city …

RCW 57.16.010(7) provides, in pertinent part:

> Any general comprehensive plan or plans shall be adopted by resolution and submitted to an engineer designated by the legislative authority of the county … and must be approved … by the engineer and director of health… within sixty days of their respective receipt of the plan. However, this sixty-day time limitation may be extended by the director of health or engineer for up to an additional sixty days if sufficient time is not available to review adequately the general comprehensive plans.
>
> … Each general comprehensive plan shall be deemed approved if the county legislative authority fails to reject or conditionally approve the plan within ninety days of the plan's submission to the county legislative authority or within thirty days of a hearing on the plan when the hearing is held within ninety days of submission to the county legislative authority. However, a county legislative authority may extend this ninety-day time limitation by up to an additional ninety days where a finding is made that ninety days is insufficient to review adequately the general comprehensive plan. In addition, the commissioners and the county legislative authority may mutually agree to an extension of the deadlines in this section.

Positions of the Parties

Shoreline complains that the Record for the public notice on the adoption of Motion No. 16-135 simply states it is approving a comprehensive sewer plan as required by RCW 57.16 but gave no notice of the impact of the amendment or of any intent to amend Snohomish County's Comprehensive Plan.[107] It asserts that the Record is devoid of any action before the Planning Commission and fails to inform interested parties of the nature of

[107] Shoreline's Brief at 4-6.

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the pending change, let alone assist parties in understanding the impact or reach of the amendment regarding sanitary sewer within the Point Wells area. [108]

Snohomish replies that RCW 57.16.010(7) required the County to review and act on Olympic View's proposed amendment within ninety days of its submission.[109] Further, Snohomish asserts that it held a public hearing and points to Exhibits 9-13, 15-18, and 19.1-19.29 as evidence of participation of the parties.[110]

Discussion

As Petitioners point out,[111] the Board has examined the public participation requirements of the GMA on many occasions. In *Weyerhauser*,[112] it held that effective public participation requires "adequate and effective notice" of a proposed action by the government. To be adequate and effective, RCW 36.70A.035 requires that notice be reasonably calculated to apprise interested parties of the general nature and magnitude of the action.[113] To be sufficient, council agendas must describe the nature of the proposed changes so that potentially interested members of the public can ascertain the reach and impact (adding, deleting, changing, etc.) of the proposed action.[114]

The pivotal issue here is that approving Olympic View's CSP amendment was a *de facto* Comp Plan amendment.[115] Again, the Board's comments in *Fallgatter V*[116] are instructive:

> If Sultan's Water and Sewer Plans had been properly based on GMA-adopted population targets and service areas, adoption of those ordinances using the

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[108] See, e.g. Index 1, 3, 14, 31, 33.
[109] County's Response Brief at 15.
[110] *Id.*
[111] Shoreline's Brief at 14-15.
[112] *Weyerhaeuser Company, et al v. Thurston County*, GMHB No. 10-2-0020c (Final Decision and Order, June 17, 2011) at 10.
[113] *See also Pirie v. City of Lynnwood,* GMHB No. 06-3-0029 (Final Decision and Order, April 9, 2007) at 16.
[114] *Orton Farms v. Pierce County,* GMHB No. 04-3-0007c (Final Decision and Order, August 2, 2004) at 13 (citing *Homebuilders Assoc. of King County v. City of Bainbridge Island*, GMHB No. 00-3-0014 (FDO, Feb. 26, 2001) at 10-11.
[115] Shoreline's Reply at 2-3.
[116] *Fallgatter V at 16-17.*

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> regular City public notice and hearing process [augmented by applicable state agency requirements, if any] would most likely be adequate to satisfy the public process procedures under the relevant statutes. However, to the extent the City relies on those plans to fulfill GMA requirements, such as facility inventories, needs assessment, identifying priorities and financing options, the City must adhere to the GMA's public participation requirements. Such functional plans are intended to implement GMA comp plans, not amend them. When a Water or Sewer Plan is revised or updated, if it is relied upon to provide required components of the Comp Plan, it is effectively a Comp Plan amendment. As such, the pending and proposed amendments should be docketed for review during the annually-scheduled Comp Plan amendment schedule. Changes to capital facilities schedules arising from the update of functional plans could also be folded into the City's annual budget review cycle. Under either option, conformity, consistency and coordination among the Comp Plan and the Water and Sewer Plans is maintained.

Snohomish County relies on Olympic View's CSP to comply with GMA planning mandates, and therefore it was required to comply with the GMA public participation requirements. It did not. Although the County points to commentary in the Record as evidence of public participation, it does not dispute that the public participation process fell short of the requirements of the GMA. All of the documents were submitted by counsel or employees of the parties to this case. There is no evidence of the "broad dissemination of proposals and alternatives, opportunity for written comments, public meetings after effective notice, provision for open discussion, communication programs, information services, and consideration of and response to public comments" required by RCW 36.70A.140.

The Board also notes that RCW 5716.010(7) allows the County legislative authority to unilaterally extend its deadline to act on Olympic View's request to up to 180 days and, with the agreement of Olympic View, the deadline could be extended further.[117] It would seem that extending the deadlines to allow for a GMA public process was possible.

The Board finds that Snohomish County's adoption of Amended Motion 16-135 was not guided by the public participation goal of RCW 36.70A.020(11) and did not comply with

[117] RCW 57.16.010(7).

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the GMA public process requirements of RCW 36.70A.070 Preamble, RCW 36.70A.140, RCW 36.70A.035.

Issue Five (Shoreline Issue 5; Ronald Issue 3.3)
Did Snohomish County, in passing Amended Motion No. 165, fail to comply with RCW 36.70A.130(2)(a) because its action will result in amendments to the Snohomish County Comprehensive Plan more frequently than once a year?

Applicable Law

RCW 36.70A.130(2) provides that "updates, proposed amendments or revisions of the comprehensive plan are considered by the governing body of the county or city no more frequently than once every year."

RCW 36.70A.130(2)(b) explains that "all proposals shall be considered by the governing body concurrently so the cumulative effect of the various proposals can be ascertained."[118]

Positions of the Parties

Shoreline asserts that, because Amended Motion 16-135 *de facto* amended the County Comprehensive Plan, the actions taken by Snohomish County in approving Olympic View's CSP amendment were contrary to the GMA's mandates for comprehensive plan amendments.[119] That is, the proposed adoption of the amendment was not docketed with the County's other comprehensive plan amendments for 2016.[120] Amended Motion 16-135 amended the comprehensive plan on June 1, 2016 and the Council acted on the remainder of the docketed comprehensive plan amendments on October 12, 2016.

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[118] RCW 36.70A.130 provides six exceptions, none of which are applicable here – initial adoption of a subarea plan; development of an initial subarea plan for economic development outside of a hundred year floodplain; adoption or amendment to a shoreline master program; amendment of a capital facilities element that occurs concurrently with the adoption or amendment of a budget; adoption of amendments necessary to enact a planned action under SEPA; and amendments that address an emergency or resolve an appeal filed with the Board or Court.
[119] Shoreline's Brief at 16-17.
[120] The Board takes official notice of Snohomish County Ordinances 16-064, 16-065, 16-066, 16-067, 16-068, 16-076, 16-077, and 16-078, which reflect the 2016 Comprehensive Plan Docket.

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Snohomish and Olympic View rest on their assertion that Amended Motion 16-135 did not amend the comprehensive plan.

Discussion

Shoreline acknowledges that Amended Motion 16-135 was adopted prior to the regularly docketed comprehensive plan amendments, but argues its adoption made "inevitable" the County's violation of the annual amendment limitation. To hold otherwise would "exalt form over substance." The Board agrees.

Amended Motion 16-135 was a *de facto* amendment to the County's Comprehensive Plan adopted outside of the annual amendment process required in RCW 36.70A.130(2). As such, its adoption violated the requirement that "all proposals shall be considered by the governing body concurrently *so the cumulative effect of the various proposals can be ascertained.*"[121]

The Board finds that Amended Motion 16-135 did not comply with the mandate of RCW 36.70A.130(2) that comprehensive plan amendments be considered concurrently and not more often than once per year.

Conclusion

The Board is convinced that a mistake has been made. In view of the record before the Board and in light of the goals and requirements of the GMA, Snohomish County's action in adopting Motion 16-135 is clearly erroneous.

- Amended Motion 16-135 is a *de facto* amendment to the Snohomish County Comprehensive Plan.
- Adoption of Amended Motion 16-135 creates an internal inconsistency between functional sewer plans incorporated in Snohomish County's 2015 Capital Facilities Plan.

[121] RCW 36.70A.130(2)(b) (Italics added).

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- Adoption of Amended Motion 16-135 creates internal inconsistency between Snohomish County's 2015 Capital Facilities Plan and General Plan Policy UT 1.B.2.
- Adoption of Amended Motion 16-135 does not comply with the requirement of RCW 36.70A.070 that comprehensive plans be internally consistent.
- Adoption of Amended Motion 16-135 did not comply with the mandate of RCW 36.780A.130(2) that comprehensive plan amendments be considered concurrently and not more often than once per year.
- Snohomish County's adoption of Amended Motion 16-135 was not guided by the public participation goal of RCW 36.70A.020(11) and did not comply with the GMA public process requirements of RCW 36.70A.070 Preamble, RCW 36.70A.140, RCW 36.70A.035, or the concurrent annual amendment requirements of RCW 36.70A.130(2).

VI. ORDER

Based upon review of the Petition for Review, the briefs and exhibits submitted by the parties, the GMA, prior Board orders and case law, having considered the arguments of the parties, and having deliberated on the matter, the Board Orders:

- Amended Motion 16-135 is remanded to Snohomish County for action to bring it into compliance with the goal of RCW 36.70A.020(11) and the requirements of RCW 36.70A.070 (Preamble), RCW 36.70A.070(3) and (4), RCW 36.70A.140, and RCW 36.70A.035.

Item	Date Due
Compliance Due	July 26, 2017[122]
Compliance Report/Statement of Actions Taken to Comply and Index to Compliance Record	August 9, 2017

[122] Respondent may request an extension if necessary to comply with a public participation process.

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Objections to a Finding of Compliance	August 23, 2017
Response to Objections	August 30, 2017
Telephonic Compliance Hearing 1 (800) 704-9804 and use pin code 4472777#	**September 12, 2017** **10:00 am**

Compliance Report/Statement of Actions Taken to Comply shall be limited to 25 pages, 35 pages for Objections to Finding of Compliance, and 10 pages for the Response to Objections.

SO ORDERED this 25th day of January, 2017.

Cheryl Pflug, Board Member

Deb Eddy, Board Member

I concur in the results of the Board's decision, including the determination that the County's approval of Amended Motion No. 16-135 constituted a *de facto* comprehensive plan amendment.

William Roehl, Board Member

Note: This is a final decision and order of the Growth Management Hearings Board issued pursuant to RCW 36.70A.300.[123]

[123] Should you choose to do so, a motion for reconsideration must be filed with the Board and served on all parties within ten days of mailing of the final order. WAC 242-03-830(1), WAC 242-03-840.
A party aggrieved by a final decision of the Board may appeal the decision to Superior Court within thirty days as provided in RCW 34.05.514 or 36.01.050. The petition for review of a final decision of the board shall be served on the board but it is not necessary to name the board as a party. See RCW 36.70A.300(5) and WAC 242-03-970. It is incumbent upon the parties to review all applicable statutes and rules. The staff of the Growth Management Hearings Board is not authorized to provide legal advice.

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Appendix A: Procedural matters

On July 29, 2016, City of Shoreline and Ronald Wastewater District filed separate Petitions for Review. The City of Shoreline's petition was assigned Case No. 16-3-0003. Ronald Wastewater District's petition was assigned Case No. 16-3-0004. Ronald amended its Petition for Review on August 2, 2015. The cases were consolidated as 16-3-0004c.[124]

A prehearing conference was held telephonically on August 24, 2016. Petitioner City of Shoreline appeared through its attorney Julie Ainsworth-Taylor. Petitioner Ronald Wastewater District (Ronald Wastewater) appeared through its attorney Duncan Greene. Respondent Snohomish County appeared through its attorneys Brian Dorsey and Jessica Kraft-Klehm. King County appeared through its attorney Verna Bromley. Olympic View Water and Sewer District appeared through its attorney, Thomas Fitzpatrick. Intervention was granted to King County and Olympic View Water and Sewer District.[125] Town of Woodway was granted intervention on September 9, 2016.[126]

The Briefs and exhibits of the parties were timely filed and are referenced in this order as follows:

- Petitioner Ronald Wastewater District's Prehearing Brief, October 24, 2016 (Ronald's Brief);
- City of Shoreline's Prehearing Brief, October 24, 2016 (Shoreline's Brief);
- Intervenor King County's Prehearing Brief, October 24, 2016 (King County's Brief);
- Respondent Snohomish County's Prehearing Brief, November 14, 2016 (County's Response Brief);
- Intervenors Olympic View Water and Sewer District and Town of Woodway's Prehearing Brief (Olympic View's and Woodway's Brief);

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[124] Order of Consolidation and Notice of Hearing and Preliminary Schedule (August 3, 2016).
[125] Prehearing Order and Order on Intervention (August 29, 2016).
[126] Order Granting Intervention to Town of Woodway.

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- Petitioner Ronald Wastewater District's Prehearing Reply Brief, November 29, 2016 (Ronald's Reply Brief);
- City of Shoreline's Reply Brief, November 29, 2016 (Shoreline's Reply Brief);
- City of Shorelines's Request for Official Notice, November 29, 2016.
- Intervenor King County's Joinder in Petitioners Ronald Wastewater District's and City of Shoreline's Prehearing Reply Briefs, November 29, 2016.

Hearing on the Merits

The hearing on the merits was held on December 13, 2016, at the Olympic View Water and Sewer District in Edmonds, Washington. Cheryl Pflug convened the hearing as presiding officer. Also present was Board member Deb Eddy. Board member William Roehl attended telephonically. The City of Shoreline was represented by Julie Ainsworth-Taylor and Margaret King. Duncan Green appeared on behalf of Petitioner Ronald. Verna Bromley appeared for King County. Snohomish County was represented by Brian Dorsey and Jessica Kraft-Klem. Tom Fitzpatrick appeared on behalf of Intervenor Olympic View and Megan Fraser Represented Intervenor Town of Woodway.

The hearing afforded each party the opportunity to emphasize the most important facts and arguments relevant to its case. Board members asked questions seeking to thoroughly understand the history of the proceedings, the important facts in the case, and the legal arguments of the parties.

Official Notice

WAC 242-03-630 authorizes the Board to take official notice of matters of law:

> (4) Counties and cities. Ordinances, resolutions, and motions enacted by cities, counties, or other municipal subdivisions of the state of Washington, including adopted plans, adopted regulations, and administrative decisions.

Accordingly, the presiding officer ruled orally at the hearing on the merits that Shoreline's November 29, 2016, Request for Official Notice of Code Provisions, the amended

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Ordinance and Amendments Sheet 30, and Snohomish County Charter Section 2.130 was **granted.**

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Filed in Open Court
October 24, 20 18
SONYA KRASKI
COUNTY CLERK
By Carlitta Cuevas
Deputy Clerk

17-2-01636-31
ORDSMWO 52
Order of Dismissal Without Prejudice
4102627

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR SNOHOMISH COUNTY

OLYMPIC VIEW WATER AND SEWER DISTRICT, Petitioner, v. CITY OF SHORELINE, RONALD WASTEWATER DISTRICT, SNOHOMISH COUNTY, KING COUNTY, and TOWN OF WOODWAY, Respondents.	CASE NO. 17-2-01636-31✓ ORDER OF VOLUNTARY DISMISSAL WITH PREJUDICE AND WITHOUT COSTS TO ANY PARTY
OLYMPIC VIEW WATER AND SEWER DISTRICT, Petitioner, v. CITY OF SHORELINE, RONALD WASTEWATER DISTRICT, SNOHOMISH COUNTY, KING COUNTY, and TOWN OF WOODWAY, Respondents.	CAUSE NO. 17-2-11183-31 ORDER OF VOLUNTARY DISMISSAL WITH PREJUDICE AND WITHOUT COSTS TO ANY PARTY

THIS MATTER came on regularly before the Court upon motion by the Petitioner Olympic View Water and Sewer ("Petitioner") for voluntary dismissal, with prejudice, and without costs to any party. It appears to the Court from the records and files herein, and the Declaration of Dawn F. Reitan, filed in support of Petitioner's Motion, that:

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1. Petitioner initiated the first action when it filed a Petition for Review on February 22, 2017, under Cause No. 17-2-01636-31 ("First Action").

2. Petitioner initiated the second action when it filed a Petition for Review on November 15, 2017, under Cause No. 17-2-11183-31 ("Second Action").

3. Petitioner initiated the third action when it filed a Petition for Review on May 2, 2018, under Cause No. 18-2-03999-31.

4. Petitioner's Motion for Voluntary Dismissal With Prejudice and Without Costs to Any Party was noted for hearing and Petitioner provided appropriate advance notice to all parties that have appeared in this action.

5. Jurisdiction and venue is proper in this action.

The court being fully advised, NOW THEREFORE,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the First Action, Cause No. 17-2-01636-31 and Second Action, Cause No. 17-2-11183-31, are hereby voluntarily dismissed with prejudice and without costs to any party. Any trial date on the court schedule shall be stricken.

DONE IN OPEN COURT this 24 day of October, 2018.

JUDGE

Presented by:

INSLEE BEST DOEZIE & RYDER PS

By: _____
Kinnon W. Williams, WSBA 16201
Dawn F. Reitan, WSBA 23148
Attorneys for Petitioner

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18-2-03999-31
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Order of Dismissal Without Prejudice
4104108

Filed in Open Court
October 24, 2018
SONYA KRASKI
COUNTY CLERK
By Carlitta Curry
Deputy Clerk

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR SNOHOMISH COUNTY

OLYMPIC VIEW WATER AND SEWER DISTRICT, Petitioner, v. CITY OF SHORELINE, RONALD WASTEWATER DISTRICT, SNOHOMISH COUNTY, KING COUNTY, and TOWN OF WOODWAY, Respondents.	CASE NO. 18-2-03999-31 ORDER OF VOLUNTARY DISMISSAL WITH PREJUDICE AND WITHOUT COSTS TO ANY PARTY

THIS MATTER came on regularly before the Court upon motion by the Petitioner Olympic View Water and Sewer ("Petitioner") for voluntary dismissal, with prejudice, and without costs to any party. It appears to the Court from the records and files herein, and the Declaration of Dawn F. Reitan, filed in support of Petitioner's Motion, that:

1. Petitioner initiated the first action when it filed a Petition for Review on February 22, 2017, under Cause No. 17-2-01636-31.

2. Petitioner initiated the second action when it filed a Petition for Review on November 15, 2017, under Cause No. 17-2-11183-31.

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3. Petitioner initiated the third action when it filed a Petition for Review on May 2, 2018, under Cause No. 18-2-03999-31.

4. Petitioner's Motion for Voluntary Dismissal With Prejudice and Without Costs to Any Party was noted for hearing and Petitioner provided appropriate advance notice to all parties that have appeared in this action.

5. Jurisdiction and venue is proper in this action.

The court being fully advised, NOW THEREFORE,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that this matter, under cause number 18-2-03999-31, is hereby voluntarily dismissed with prejudice and without costs to any party. Any trial date on the court schedule shall be stricken.

DONE IN OPEN COURT this 24 day of October, 2018.

JUDGE

Presented by:

INSLEE BEST DOEZIE & RYDER PS

By: _____
Kinnon W. Williams, WSBA 16201
Dawn F. Reitan, WSBA 23148
Attorneys for Petitioner

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BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD
CENTRAL PUGET SOUND REGION
STATE OF WASHINGTON

RONALD WASTEWATER DISTRICT, et al.,

Petitioners,

and

KING COUNTY,

Intervenor,

v.

SNOHOMISH COUNTY,

Respondent,

and

OLYMPIC VIEW WATER AND SEWER DISTRICT AND TOWN OF WOODWAY,

Intervenors.

CASE No. 16-3-0004c

ORDER FINDING COMPLIANCE

I. INTRODUCTION

On January 25, 2017, the Board issued its Final Decision and Order (FDO) in this case. The Board remanded Amended Motion No. 16-135 to Snohomish County (County) for action. On October 19, 2017, the Board issued its Order Finding Continuing Non-Compliance holding that the County was in continuing non-compliance with goals and requirements of RCW 36.70A.020(11), RCW 36.70A.070 (Preamble), RCW 36.70A.070(3) and (4), RCW 36.70A.140, and RCW 36.70A.035.

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Subsequently, the County approved Motion No. 18-003[1] and filed its Second Statement of Actions Taken to Comply (Second SATC).[2] After compliance briefings and a hearing, the Board determined that adoption of Motion No. 18-003 did not bring the County into compliance and found Snohomish County in continuing non-compliance with regard to Amended Motion No.16-135.[3]

On June 14, 2018, the County filed its Third Statement of Actions Taken to Comply (Third SATC).[4] Neither Petitioners Ronald Wastewater District (Ronald), the City of Shoreline (Shoreline) nor Intervenor King County filed Objections to the County's Third SATC.

Pursuant to RCW 36.70A.330(1) and (2), the Board conducted a telephonic compliance hearing on August 8, 2018. Board members Deb Eddy and William Roehl attended the hearing. Cheryl Pflug convened the hearing as the Presiding Officer. Ronald Wastewater District appeared through its attorneys, H. Ray Liaw. The City of Shoreline appeared through its attorney, Julie Ainsworth-Taylor. Intervenor King County appeared through its attorneys, Verna Bromley and Mark Stockdale. Snohomish County appeared through its attorney, Brian Dorsey. Olympic View Water and Sewer District appeared through its attorney, Kinnon William. The Town of Woodway was not represented at the compliance hearing.

II. STANDARD OF REVIEW

After the Board has entered a finding of non-compliance, the local jurisdiction is given a period of time to adopt legislation to achieve compliance.[5] After the period for compliance has expired, the Board is required to hold a hearing to determine whether the local jurisdiction has achieved compliance.[6] For purposes of Board review of the comprehensive

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[1] Approved January 31, 2018.
[2] Filed February 16, 2018.
[3] Second Order Finding Continuing Non-Compliance (April 6, 2018).
[4] Filed June 16, 2018.
[5] RCW 36.70A.300(3)(b).
[6] RCW 36.70A.330(1) and (2). In this instance, the County filed its Third SATC early and, with no objection from the other parties, the Board advanced the date for the compliance hearing. Order Changing Date of Telephonic Compliance Hearing (June 28, 2018).

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plans and development regulations adopted by local governments in response to a non-compliance finding, the presumption of validity applies and the burden is on the challenger to establish that the new adoption is clearly erroneous in view of the entire record before the board and in light of the goals and requirements of the Growth Management Act (GMA).[7]

In order to find the County's action clearly erroneous, the Board must be "left with the firm and definite conviction that a mistake has been made."[8] Within the framework of state goals and requirements, the Board must grant deference to local governments in how they plan for growth.[9] Thus, during compliance proceedings the burden remains on the Petitioner to overcome the presumption of validity and demonstrate that **any action** taken by the County is clearly erroneous in light of the goals and requirements of chapter 36.70A RCW.[10]

III. DISCUSSION

The Remanded Issues

In its Second Order Finding Continuing Non-Compliance, the Board determined that adoption of Motion No.18-003 did not resolve the inconsistency between functional sewer plans incorporated in the County's Capital Facilities Plan or between its Capital Facilities Plan and General Plan Policy UT 1.B.2, and it did not bring the County into compliance with GMA public participation requirements and concurrent annual amendment requirements with regard to Amended Motion No.16-135 such that the County was in continuing noncompliance with goals and requirements of RCW 36.70A.020(11), RCW 36.70A.070 (Preamble), RCW 36.70A.070(3) and (4), RCW 36.70A.140, 130(2) and RCW 36.70A.035.[11]

[7] RCW 36.70A.320(1), (2), and (3).
[8] *Department of Ecology v. PUD1*, 121 Wn.2d 179, 201, 849 P.2d 646 (1993).
[9] RCW 36.70A.3201.
[10] RCW 36.70A.320(2).
[11] Second Order Finding Continuing Non-Compliance (April 6, 2018).

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The County's Compliance Action

On June 6, 2018, the County approved Motion No. 18-179, repealing in its entirety Amended Motion No. 16-135,[12] Amended Motion No. 17-250 and Motion No.18-003.[13]

Board Analysis

Inconsistency

During the first compliance proceeding, the Board found the County in continuing non-compliance after adoption of Motion No. 17-250 "suspended" Motion No. 16-135 "until, and unless, there is no further inconsistency between the effective sewer plans of Olympic View and Ronald...."[14]

During the second compliance proceeding, the Board similarly determined that repealing amended Motion No. 16-135 "to the extent [it] conflict[s] with the previously approved comprehensive sewer plan of Ronald Wastewater District" meant that Motion No. 18-003 was not a complete repeal of Amended Motion No. 16-135, did not explain what was repealed and what persisted, nor by whom or how a determination of consistency would be made. Thus, Motion No.18-003 did not resolve the inconsistencies existing between functional sewer plans incorporated in Snohomish County's 2015 Capital Facilities Plan, nor the inconsistency between the County's Capital Facilities Plan and its General Plan Policy UT 1.B.2, in continuing violation of RCW 36.70A.070.

The County having now approved Motion No. 18-179 which repeals in entirety the first non-compliant action, Motion No. 16-135, and the prior attempted compliance actions by the County, Amended Motion No. 17-250 and Motion No. 18-003, **the Board finds** that all inconsistent language has been repealed.

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[12] Motion No. 18-179 (June 6, 2018) p.4, Section C.
[13] Motion No. 18-179, pp. 3-4, Sections A and B.
[14] Order Finding Continuing Non-Compliance (October 19, 2017) at 7; County's First SATC (August 8, 2017) at 7.

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The Board finds and concludes that the inconsistency between the functional sewer plans incorporated in Snohomish County's 2015 Capital Facilities Plan and the inconsistency between the County's Capital Facilities Plan and its General Plan Policy UT 1.B.2 have been resolved.

Public Process

Prior compliance actions that left portions of Motion No. 16-135 in place did not cure violations which the Board found resulted from adoption of a *de facto* comprehensive plan amendment without a GMA-compliant public participation process. Further, new language in Motion No. 18-003 referring to the Town of Woodway was adopted without public participation.

The County having now repealed in its entirety Motion No. 16-135, Amended Motion No. 17-250 and Motion No. 18-003, all non-compliant language is no longer operative and the Board can no longer provide relief.[15] **The Board finds and concludes** that the question of public participation is moot.

IV. ORDER

Based upon review of the October 19, 2017, Order Finding Continuing Non-Compliance, the County's Statement of Actions Taken to Achieve Compliance and Motion No. 18-003, the Growth Management Act, prior Board orders and case law, having received no objection from the Petitioners or Intervenors in briefing or at the compliance hearing, and having deliberated on the matter, the Board Orders:

- The County's adoption of Motion No. 18-179 renders the Petition for Review of Ordinance No. 16-135 **moot**.
- The matter of Ronald Wastewater District, et al. v. Snohomish County is **dismissed.**

[15] *See Anderson, et al v. City of Monroe,* GMHB No. 12-3-0007 (Order on Dispositive Motion, December 11, 2012) at 4-7.

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- Case No. 16-3-0004c is **closed.**

SO ORDERED this 13th day of August, 2018.

Cheryl Pflug, Board Member

Deb Eddy, Board Member

William Roehl, Board Member

Note: This is a final decision and order of the Growth Management Hearings Board issued pursuant to RCW 36.70A.300.[16]

[16] Should you choose to do so, a motion for reconsideration must be filed with the Board and served on all parties within ten days of mailing of the final order. WAC 242-03-830(1), WAC 242-03-840.
A party aggrieved by a final decision of the Board may appeal the decision to Superior Court within thirty days as provided in RCW 34.05.514 or 36.01.050. The petition for review of a final decision of the board shall be served on the board but it is not necessary to name the board as a party. See RCW 36.70A.300(5) and WAC 242-03-970. It is incumbent upon the parties to review all applicable statutes and rules. The staff of the Growth Management Hearings Board is not authorized to provide legal advice.

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No. 94633-7

SUPREME COURT
OF THE STATE OF WASHINGTON

OLYMPIC VIEW WATER AND SEWER DISTRICT, a Washington municipal corporation; and TOWN OF WOODWAY, a Washington municipal corporation,

Appellants,

v.

RONALD WASTEWATER DISTRICT, a Washington municipal corporation,

Respondent,

and

SNOHOMISH COUNTY, a Washington municipal corporation; KING COUNTY, a Washington municipal corporation; CITY OF SHORELINE, a Washington municipal corporation,

Defendants.

OLYMPIC VIEW WATER & SEWER DISTRICT'S STATEMENT OF GROUNDS FOR DIRECT REVIEW

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Attorneys for Appellant Olympic View Water & Sewer District

A. INTRODUCTION

Olympic View Water & Sewer District ("Olympic View") seeks direct review of the trial court's May 9, 2017 order, granting partial summary judgment and declaratory relief in favor of Ronald Wastewater District ("Ronald") and dismissing with prejudice a claim by Olympic View's and the Town of Woodway's ("Woodway"). RAP 4.2(a)(4) and (5).

This case involves an issue of public importance relating to the right to provide sewer services to a new development slated for the Point Wells area along Puget Sound in the southwest portion of unincorporated Snohomish County ("Snoco"). Both Olympic View and Ronald claim the right to provide such services. While Point Wells is presently an industrial area, it is slated for redevelopment with the lower area becoming an "urban center" with thousands of new residents.

The City of Shoreline ("Shoreline"), a King County ("Kingco") city, plans to annex the Point Wells urban center area,[1] but Snoco has long planned for a different future for that area. It has designated the area for

[1] Shoreline is in the process of "assuming" Ronald, taking over Ronald and its services, after which Ronald will cease to exist. RCW 35.13A. Over 99% of Ronald is within Shoreline. Shoreline is using the assumption process and this case to try to establish that Ronald has territory within its corporate boundaries in Snoco. This furthers its annexation aims so as to skirt Snoco Planning Policies (JP-3) that do not allow cross-border annexations by cities with no territory in Snoco unless the city has an interlocal agreement with Snoco. Shoreline does not have such an agreement.

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annexation by Woodway because it is located in Woodway's Municipal Urban Growth Area ("MUGA"). The entire area at issue is within Olympic View's corporate boundaries and has been for decades.[2]

At its core, resolution of this case requires the determination of whether a 1985 King County Superior Court order ("Transfer Order"), which allegedly transferred the old Richmond Beach sewer system from Kingco to Ronald resulted in Point Wells' annexation by Ronald and whether that order has preclusive effect against Snoco, Woodway, and Olympic View ("Snoco defendants"), none of whom were parties to that case.

Direct review is appropriate because the trial court's determination that the Transfer Order was an *in rem* judgment and that it had preclusive effect contravenes established principles of law established by this Court, involves public issues, and involves an action against state officers.

B. ISSUES PRESENTED ON DIRECT REVIEW

1. Where Kingco in a collaborative lawsuit with Ronald transferred its Richmond Beach sewer system to Ronald and obtained an agreed order providing for Ronald's alleged annexation of Point Wells, did the trial court err in finding annexation to be valid when the boundary of the Richmond Beach

[2] Olympic View is the water provider for the area, and can also provide sewer service to customers; it has developed a plan to do so. Most significantly, Olympic View can offer such services with huge cost savings for future customers in Point Wells. Millions of dollars in hook-up fees and hundreds of thousands of dollars a year in sewer charges will be saved. Those receiving services would also be able to vote for those who set the rates.

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sewer system was the King/Snohomish county line, and the statute authorizing such a procedure provided that a county could only transfer a sewer system located entirely within the confines of a single county?

2. Did the trial court err by finding that the Transfer Order was *in rem* judgment, carrying preclusive effect so to bar the Snoco defendants from challenging it, even though they were not parties to the lawsuit, had been given no specific notice of the lawsuit or that an annexation would occur in their territory, and their due process rights were ignored?

3. Did the trial court err by upholding the validity of the Transfer Order even through it was the product of special legislation under article II, § 28 of the Washington Constitution for the sole benefit of Kingco in its divestiture of local sewer operations?

C. NATURE OF CASE AND DECISION

Point Wells encompasses an area in southwestern Snoco. It has a lowland area (approximately 50 acres); its urban center is in that lowland area and presently involves the site of an old petroleum plant and tank farm. The upland portion known as the Upper Bluff (approximately 40 acres) has been annexed by Woodway. *See* Appendix 1 (topographical photo of Point Wells from Shoreline); Appendix 2 (area annexed by Woodway);[3] Appendix 3 (Ronald customers in Point Wells);[4] Appendix 4 (Olympic View's current service area).

[3] Ronald asserted below that both portions of Point Wells are within its corporate boundaries, but Shoreline seeks to assume only the portion not presently in Woodway.

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Since 1946, Point Wells has been within Olympic View's corporate boundaries. Originally a water district, Olympic View began in 1966 to provide sewer services, as permitted by law. Woodway also provided sewer services within its corporate boundaries, but in 2004, it conveyed its sewer system to Olympic View. By contract, consistent with local planning, Olympic View is the sole sewer service provider in Woodway.[5]

As previously noted, Point Wells has been designated by the Snoco Comprehensive Plan as part of Woodway's MUGA and annexation area. Although never recognized in the Snoco Plan, Shoreline has planned to annex a portion of Point Wells as permitted by a Court of Appeals decision to be discussed *infra*.

Ronald was formed as a sewer district in 1951. Its corporate boundaries were entirely within Kingco, but did not extend to the shores of Puget Sound in Kingco. Sewer service to that portion of Kingco, and what little sewer service there is in Point Wells, began initially with the Richmond Beach sewer system. It was a sewerage district created under Title 85 – King County Sewerage District #3 ("KCSD #3"). Its boundaries extended northward and ended at the Kingco-Snoco line.

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[4] There is essentially no sewer infrastructure in Point Wells, except two customers.

[5] Woodway has given notice it will assume Olympic View in 2024.

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In 1970, KCSD #3 entered into a Line Extension Agreement ("Agreement") with Standard Oil Company ("Standard"), the owner of the abutting Point Wells property north of the county line used for its petroleum operations, to provide services. The agreement called for Standard to extend an eight inch sewer line from an existing lift station owned by KCSD #3 in Kingco, approximately 175 feet north across the county line to a new lift station to be constructed by Standard (now known as Lift Station 13) on its Snoco property. After these improvements were constructed, ownership passed to KCSD #3.[6] Service would be provided by contract.

As recognized by the Agreement's terms, the Standard property was not within KCSD #3's corporate boundaries. Had KCSD #3 wished to amend its corporate boundaries, it would have been required to follow the annexation procedure of former RCW 56.24.070 (repealed in 1996), requiring filing of a notice of intention with the Snoco Boundary Review

[6] A similar process was followed for a parcel located within Woodway owned by Daniel Briggs known as the Briggs subdivision, outside Point Wells that now has four residences. Appendix 3. Woodway permitted this as "interim service." Ronald claims these four homes are within its corporate boundaries. Shoreline does not seek to assume them since it cannot operate a system in another city without consent, something it does not have.

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Board ("BRB") pursuant to RCW 36.93.090(1).[7] None of these actions occurred, and KCSD #3 never annexed Point Wells.

In approximately 1984, Kingco desired to get out of operating local sewer systems and instead focus on wastewater treatment, now handled by its METRO division. Kingco secured legislative enactment of specific laws to facilitate its divestiture of sewer systems. Pursuant to that authority, Kingco abolished KCSD #3 and operated the Richmond Beach sewer system directly under the authority of the County Services Act, RCW 36.94.[8] A provision in the legislation passed for Kingco's benefit, RCW 36.94.310, allowed a district to transfer the property constituting a system of sewerage to a county "*within which all of its territory lies*." Kingco and KCSD #3 entered into a "Agreement Transferring Sanitary Sewer System" in which the boundaries of KCSD #3 were identified as being "located in King County." The accompanying Richmond Beach Comprehensive Plan referenced that agreement and described the boundaries of KCSD #3 as "bounded on the north by Snohomish County."

Shortly after the transfer of KCSD #3 to Kingco, Kingco entered into an "Agreement Transferring Sanitary Sewer System" to transfer the

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[7] The Legislature developed the BRB process specifically to provide for orderly growth and to avoid overlapping districts. RCW 36.93.010.

[8] The Act only authorizes a county to operate and maintain a system of sewerage located within that county. RCW 36.94.020.

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Richmond Beach sewer system to Ronald. RCW 36.94.410.[9] The agreement also provided that the area served would be annexed by Ronald. Utilizing RCW 36.93.105 that provided for a superior court to effectuate annexation without BRB review, Kingco and Ronald filed a lawsuit and brought an agreed order to the King County Superior Court. That court entered the Transfer Order. Attached to the Kingco/Ronald pleadings was an appendix that included a legal description describing the "area served" by the Richmond Beach sewer system; it included parcels in Snoco with no sewer infrastructure, except for the limited service by private developer extension agreements. That area was within the service boundaries of Olympic View and Woodway. The Transfer Order ostensibly then provided for Ronald's annexation of those Snoco areas. Olympic View, Woodway, and Snoco were never served or joined in the lawsuit. Their only notice would have been a classified ad published once in a Seattle newspaper setting out the hearing date for court approval of the transfer to Ronald.

In 2002, Ronald and Shoreline entered into an "Interlocal Operating Agreement ("IOA")" providing for Ronald's assumption by the City after 15 years of payments by Ronald to Shoreline to forebear

[9] As discussed below, that provision only applies if the transfer is entirely within a county.

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assumption. The IOA's title states it relates to sanitary sewer services "within Shoreline's City Limits."

When major development for Point Wells became known, Ronald for the first time claimed it had territory in Snoco.[10] That newfound assertion of Snoco territory occurred in its 2007 and 2010 Comprehensive Plans where Ronald only referenced the title of the IOA, so that its take-over by Shoreline was not noticeable.

In its zeal to annex Point Wells, Shoreline asserted its assumption of Ronald was predicated on the IOA even though that IOA only relates to areas within Shoreline.[11] The IOA provides that Ronald will cease to exist on October 23 2017.[12] Olympic View amended its Comprehensive Sewer Plan to serve Point Wells. That amendment was approved by all Snoco reviewing agencies. Shoreline and Ronald petitioned the Growth

[10] For over twenty years, Ronald never asserted it had any Snoco territory. In obtaining a franchise, it represented to Snoco that the area was outside its corporate boundaries. In obtaining funds from the state's Public Works Trust Fund to upgrade Lift Station 13 in 1995, its only investment in facilities that serves six total Ronald customers in Snoco and over fifty in Shoreline, it represented that Lift Station 13 was outside its corporate boundaries. Ronald's 1990 and 2001 Comprehensive Plan stated this as well.

[11] Shoreline could not annex Ronald territory in Snoco; the Snoco BRB rejected the assumption in 2014. Shoreline and Ronald abandoned their judicial appeals of that decision two years later. Shoreline did not have an interlocal agreement with Snoco.

[12] Shoreline and Ronald have now ostensibly extended the IOA for two more years with Shoreline taking over and running the utility, but Ronald's compliant board would remain to further Shoreline's litigation ends and Shoreline will be paid about $1 million a year not to assume the utility the city will already be running.

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Management Hearings Board, asserting Snoco's approval was a *de facto* amendment to the Snoco Comprehensive Plan. The Board concurred.[13]

Ronald filed the present action in the Kingco Superior Court. The trial court found in a May 9, 2017 order that the Transfer Order was a valid *in rem* judgment carrying preclusive effect as to the Snoco defendants, who were not parties to the 1985 Kingco lawsuit, as to whether Ronald had annexed Point Wells territory located in Snoco. It then certified the case for appeal, and stayed the balance of the lawsuit. *See* Appendix 5.

D. REASONS WHY DIRECT REVIEW SHOULD BE GRANTED

This case largely is the result of a Court of Appeals decision in *Chevron USA Inc. v. Central Puget Sound Growth Management Hearings Board,* 123 Wn. App. 161, 93 P.3d 88 (2004), where the court held there was no GMA violation if two cities both planned to annex the same area as long as the plans did not thwart each other. As a result, Shoreline went forward with its plans to annex Point Wells, as did Woodway and Snoco, whose Comprehensive Plan has the area designated as part of Woodway's MUGA ultimately to be annexed by Woodway. In addition, Snoco's Countywide planning policies prelude an annexation in Snoco by a city

[13] Snoco is undergoing compliance and the decision is on appeal. Ultimately, Snoco will determine if Ronald can remain a sewer provider to Point Wells after more GMA proceedings.

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that did not already have territory in the county until an interlocal agreement addressing Snoco planning concerns was in place.[14]

Instead, Shoreline maneuvered to skirt Snoco's requirement by its assumption of Ronald, having Ronald assert that it has territory in Snoco as a result of the Transfer Order. If Ronald has no territory in Snoco, all of the current legal proceedings are negated. Shoreline can still annex territory in Snoco if it works in a cooperative fashion with Snoco and fashions an interlocal agreement.[15]

As a result of this maneuvering, public entities have spent hundreds of thousands of taxpayer/ratepayer dollars on legal fees because of competing annexation plans the Court of Appeals effectively permitted. This appeal is now the tenth proceeding relating to the assumption of Ronald and Point Wells.[16] Olympic View and its ratepayers have been

[14] Shoreline has made no real effort to negotiate an interlocal agreement with Snoco.

[15] Ronald has no real interest here since upon assumption it will cease to exist. It will never serve future customers in Snoco, it only has six customers there (two in Point Wells and four in Woodway), it would need an entirely new infrastructure to serve any significant development at Point Wells.

[16] These proceedings include: Kingco/Snoco BRB review of Shoreline's assumption of Ronald, the Shoreline/Ronald appeals of the denial of the assumption by the Snoco BRB in the Snoco Superior Court, submissions to Olympic View by Shoreline and Ronald in the SEPA process for Amendment #2 to the Olympic View Comprehensive Sewer Plan, proceedings before the Snoco Council regarding the approval of Amendment #2, the case before the Growth Management Hearings Board on Snoco's approval of Olympic View's Amendment #2, the appeal of that decision to the Snoco Superior Court, the 2016 Kingco declaratory relief action from which this appeal

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particularly prejudiced by these ongoing proceedings. It has long planned for the provision of sewer service to Point Wells, an area within its corporate boundaries.

(1) The Trial Court Lacked Statutory Authority to Issue the Transfer Order Allowing Ronald to Annex Snoco Territory

The Transfer Order was entered by the King County Superior Court pursuant to RCW 39.94.440 which provided for approval of an informal annexation if the transfer agreement was "legally correct." In order to be legally correct, that transfer had to comply with the provisions of RCW 36.94.410.[17] It did not.

As noted above, the County Services Act, RCW 36.94, only allows a county to operate a system within the same county, unless done in conjunction with another county or by consent, both of which are not present here. Significantly, RCW 36.94.410 makes it clear that county-to-district transfers are permitted *only* in the same fashion as district-to-

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is taken, another filing by Shoreline with the Snoco BRB in which the BRB ruled against it on June 22, 2017, and this appeal.

[17] That statute provides:

> A system of sewerage, system of water or combined water and sewerage systems *operated by a county under the authority of this chapter* may be transferred from that county to a water-sewer district *in the same manner as is provided for the transfer of those functions from a water-sewer district to a county under RCW 36.94.310 through 36.94.340.*

(emphasis added).

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county transfers under RCW 36.94.310.[18] That provision limits a transfer territory located only within a county.

In allowing transfer of KCSD #3 territory in Snoco to Ronald, the Transfer Order conferred overlapping service authority on Ronald with Olympic View (and within Woodway). This runs afoul of the statutory scheme.[19] It also violated the entire legislative effort for decades to stop the profusion of overlapping districts and jurisdictions. The Legislature created the BRB process to guard against this. RCW 36.93.010.[20]

(2) The Snoco Defendants Are Not Bound by the Transfer Order

---

[18] RCW 36.94.310 provides in relevant part:

> Subject to the provisions of RCW 36.94.310 through 36.94.350, a municipal corporation may transfer to the county *within which all of its territory lies*, all of part of the property constituting its system or sewerage, system or water, or combined water and sewerage system, together with any of its other real or personal property used or useful in connection with the operation, maintenance, repair, replacement, extension or financing of that system…

(emphasis added).

[19] RCW 36.94 is the exclusive basis for superior court jurisdiction. There is no inherent constitutional or common law right for courts to effectuate annexation. Thus, the Kingco court in 1985 lacked subject matter jurisdiction to approve annexation to Ronald of territory outside of Kingco and such action was void *ab initio*. *See Marley v. Dep't of Labor & Indus.,* 125 Wn.2d 533, 539, 886 P.2d 189 (1994) ("a void judgment exists whenever the issuing court lacks personal jurisdiction over the party or subject matter over the claim.").

[20] At the time of the Transfer Order and today, any change in boundary of a special purpose district or the extension of permanent sewer service outside of the existing corporate boundaries by a special purpose district requires BRB review. RCW 36.93.090. In *Alderwood Water District v. Pope & Talbott,* 62 Wn.2d 319, 382 P.2d 639 (1969), this Court reaffirmed the general rule that two municipal corporations may not exercise the same function in the same territory at the same time, finding it a "touchstone" as it expresses a public policy against duplication of public functions.

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The trial court found the Snoco defendants were bound by the Transfer Order under *res judicata* principles because the order was a final judgment *in rem*. The trial court's decision is wrong, creating the potential for a misreading of trial court *in rem* authority in future cases. *Res judicata* is clearly inapplicable.[21] The court in the 1985 Kingco action never made a decision *on the merits* as to Kingco's ability to transfer KCSD #3's putative authority in Snoco to Ronald so as to avoid the BRB process; the issue was never litigated as it was an agreed order emanating from the parties who benefitted from it, studiously avoiding notice to the parties who did not. Obviously, the parties were not the same, and privity does not apply.

Critically, the Transfer Order does not qualify as an *in rem* judgment as to obviate personal notice to the Snoco defendants.[22] An agreed transfer of a sewer system is not any of the types of actions usually associated with an *in rem* judgment.

---

[21] For that doctrine to apply, four factors have to be present: There must be a concurrence in identity in: (1) subject matter; (2) cause of action; (3) persons and parties; and (4) quality of the persons for or against whom the claim is made. *Emerson v. Dep't of Corrections,* 194 Wn. App. 617, 627, 376 P.3d 430 (2016). None of these factors are present here.

[22] "Actions against property or those that are brought to adjudicate rights in the "res" (thing) itself are called "in rem" proceedings. The subject of such actions is the property itself." Karl B. Tegland, 14 *Washington Practice,* § 5:1. A quiet title action typifies a pure *in rem* proceeding. "Proceedings normally classified as in rem include admiralty, probate, eminent domain, proceedings to divide or determine title to property, bankruptcy, escheat, and proceedings to establish ownership of corporate shares." *Id.*

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Even if the 1985 lawsuit was an "*in rem*" proceeding, it cannot have preclusive effect because of the denial of the Snoco defendants' due process rights.[23] In an *in rem* proceeding, "the defendant must still be given adequate notice and the opportunity to be heard." Karl B. Tegland and Douglas Ende, *Washington Handbook on Civil Procedure,* § 11.1. Indeed, due process requirements apply regardless of whether the jurisdiction being sought is classified as *in personam* or *in rem*. *Id.* at § 10.13.

Due process requires that the notice be reasonably calculated under all the circumstances to reach the intended person. *Mullane v. Central Hanover Bank & Trust Co.,* 339 U.S. 306, 314-15, 70 S. Ct. 652 (1950). Service by publication can sometimes be used regarding *in rem* proceedings, but not relative to the Snoco defendants. Actual notice to the defendant must be given for *in rem* proceedings or rigorous compliance with service by publication must be met. Karl B. Tegland, 14 *Washington*

[23] "In a very narrowly defined range of circumstances, a court lacking personal jurisdiction over a defendant may properly take action affecting the defendant pursuant to its *in rem* powers." Karl B. Tegland and Douglas Ende, *Washington Handbook on Civil Procedure,* § 11.1. But here, the trial court had personal jurisdiction over the Snoco defendants if they were joined in the action. CR 19 required them to be joined. Any basis for *in rem* jurisdiction did not exist here because *in personam* jurisdiction existed and could have been exercised if Kingco/Ronald complied with proper procedure and CR 19.

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Practice at § 5.9. The requirements for service by publication required under RCW 4.28.100 were not met here.[24]

The provision of sewer services is a proprietary function. As such, Olympic View and Woodway had a property interest in being able to provide service and to obtain future customers and revenue. The Transfer Order invaded that property right, conferring overlapping authority on Ronald over Snoco territory served by Olympic View. Property cannot be taken without due process of law, which is exactly what happened here.

(3) The Procedure Developed to Invade Olympic View's Territory and Take Its Property Was Special Legislation Prohibited by the Washington Constitution.

Shoreline and Ronald argued below, and the trial court apparently agreed, that there was no constitutional infirmity in the Transfer Order. However, the Order was accomplished pursuant to special legislative enactments designed to aid Kingco's divestiture of local sewer systems.

This is the only known cross-border annexation. Being able to enlarge its district to the disadvantage of others without providing those whose interests are affected a right to be heard is clearly a "special

[24] RCW 4.28.100 requires that a defendant not be in the state or with diligent search cannot be located. It also requires that the complaint be mailed to the defendant. The petition in the underlying lawsuit does not even make clear that rights of the Snoco defendants were involved. The only notice to Olympic View or the other Snoco defendants would possibly have been a classified ad in the Seattle P.I. Olympic View simply had no notice that the suit would involve an annexation or affect its rights.

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corporate power or privilege" being afforded *only* to Ronald, so that Kingco's transfer of KCSD #3 could be achieved. Our Constitution bars such special legislation.[25]

Legislation that favors one particular person, group, or area to the exclusion of others is barred. *Municipality of Metropolitan Seattle v. City of Seattle,* 57 Wn.2d 446, 357 P.2d 863 (1960). Special legislation is legislation that operates upon a single person or entity, while general legislation operates upon all things or people within a class. *In re Metcalf,* 92 Wn. App. 165, 963 P.2d 911 (1998). It has been long held that corporate powers in subsection 6 of article II, § 28 applies to municipal corporations, as well as private corporations. *Terry v. King County,* 43 Wash. 61, 85 P. 210 (1906).

In addition, Ronald contends that RCW 57.02.001[26] retroactively made the illegal Transfer Order legal. That also violates article II, § 28.

---

[25] Article II, § 28 provides in applicable part:

> The legislature is prohibited from enacting any private or special laws in the following cases:
>
> 6. For granting corporate powers or privileges.
>
> 9. From giving effect to invalid deeds, wills, or other instruments.
>
> 12. Legalizing, except as against the state, the unauthorized or invalid act of any officer.

[26] Prior to 1996, there were separate provisions in Washington law for water districts and sewer districts. Water districts were covered by Title 57. Sewer districts

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On its face, RCW 57.02.001 does not apply to Kingco and its proceedings are not covered by it.[27]

(4) Direct Review Is Merited

Direct review here is appropriate under RAP 4.2(a)(4). If the Court of Appeals decides the case, it is likely one or more parties will seek review in this Court. As numerous public entities are involved, they are expending public resources on the attendant legal expenses; one final appellate review is fiscally responsible. This case was generated by Division I's *Chevron USA* decision that allowed parallel territorial claims of local governments to proceed. It involves issues of municipal law and constitutional issues associated with that law. In cases involving overlapping jurisdiction of local governments, this Court has readily

---

were covered by Title 56. The Legislature then allowed districts to provide both services which became known as mutual districts. The Legislature decided in 1996 to merge the two titles together in Title 57 and have it apply to both water and sewer districts. That is the origin of RCW 57.02.001 which is an anodyne provision to insure that prior acts of sewer districts were no longer invalid simply because Title 56 relating to sewer districts was repealed and merged into Title 57.

[27] Moreover, the Transfer Order is the product of a Kingco ordinance finding the transfer and annexation were in the public welfare. The Washington Constitution prohibits the Kingco Council from legislating what was in the public welfare outside its borders. Article XI, § 11 "Police and Sanitary Regulations" states:

> Any county, city, town or township may make and enforce *within its limits* all such local police, *sanitary,* and other regulations as are not in conflict with general laws.

(emphasis added).

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granted direct review. *E.g., Skagit Cty. Pub. Hosp. Dist. No. 304 v. Skagit Cty. Pub. Hosp. Dist. No. 1*, 177 Wn.2d 718, 305 P.3d 1079 (2013).

Direct review is also appropriate under RAP 4.2(a)(5). *See, e.g., Dioxin/Organochlorine Ctr. v. Dep't of Ecology (D/O Center),* 119 Wn.2d 761, 763, 837 P.2d 1007 (1992) (suit against the director of the Department of Ecology). A water/sewer district is a subdivision of the State. *King Cty. Water Dist. No. 54 v. King Cty. Boundary Review Bd.*, 87 Wn.2d 536, 540, 554 P.2d 1060 (1976) (recognizing principle). The gravamen of this action is to enjoin Shoreline/Ronald and their officers from continuing to usurp Olympic View's service area. That was the essence of the Olympic View/Woodway complaint dismissed by the trial court here.

E. CONCLUSION

This Court should grant direct review. RAP 4.2(a)(4).

DATED this 26th day of June, 2017.

Respectfully submitted,

Philip A. Talmadge

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Thomas M. Fitzpatrick, WSBA #8894
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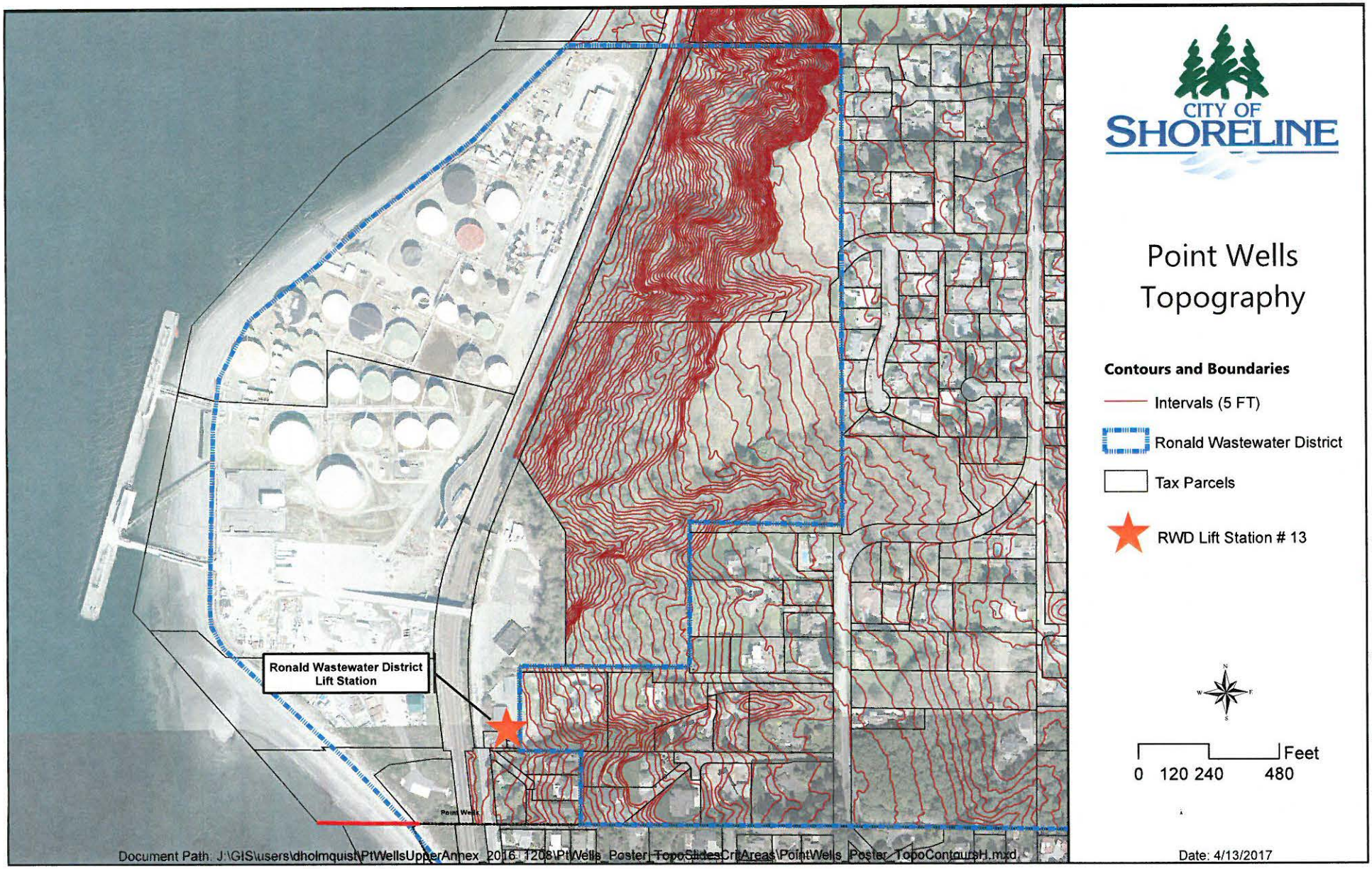
(206) 574-6661
Attorneys for Appellant
Olympic View Water & Sewer District

APPENDIX 1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Lift Station
Point Wells
CITY OF
SHORELINE
Point Wells
Topography
Contours and Boundaries
Intervals (5 FT)
Ronald Wastewater District
Tax Parcels
RWD Lift Station # 13
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0 120 240 480
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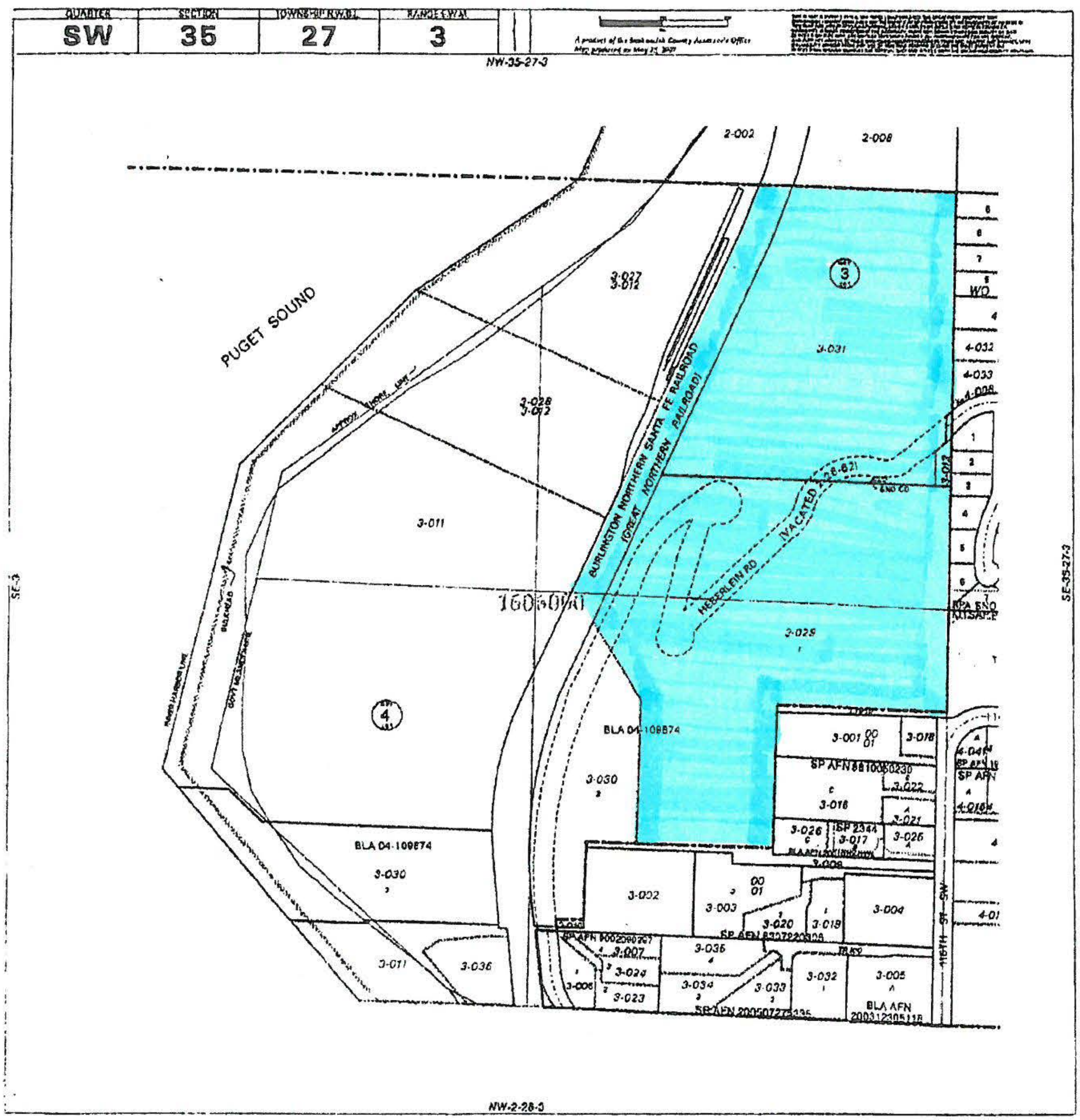
Date: 4/13/2017

APPENDIX 2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3
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3-012
3-028
3-012
3-011
3-031
3-029
3-030
BLA 04-109874
BURLINGTON NORTHERN SANTA FE RAILROAD
(GREAT NORTHERN RAILROAD)
HEBERLEIN RD
(VACATED
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NW-2-28-3
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3-018
3-016
3-022
3-021
3-026
3-017
3-002
3-003
3-020
3-019
3-004
3-036
3-011
3-007
3-024
3-006
3-023
3-035
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BLA AFN
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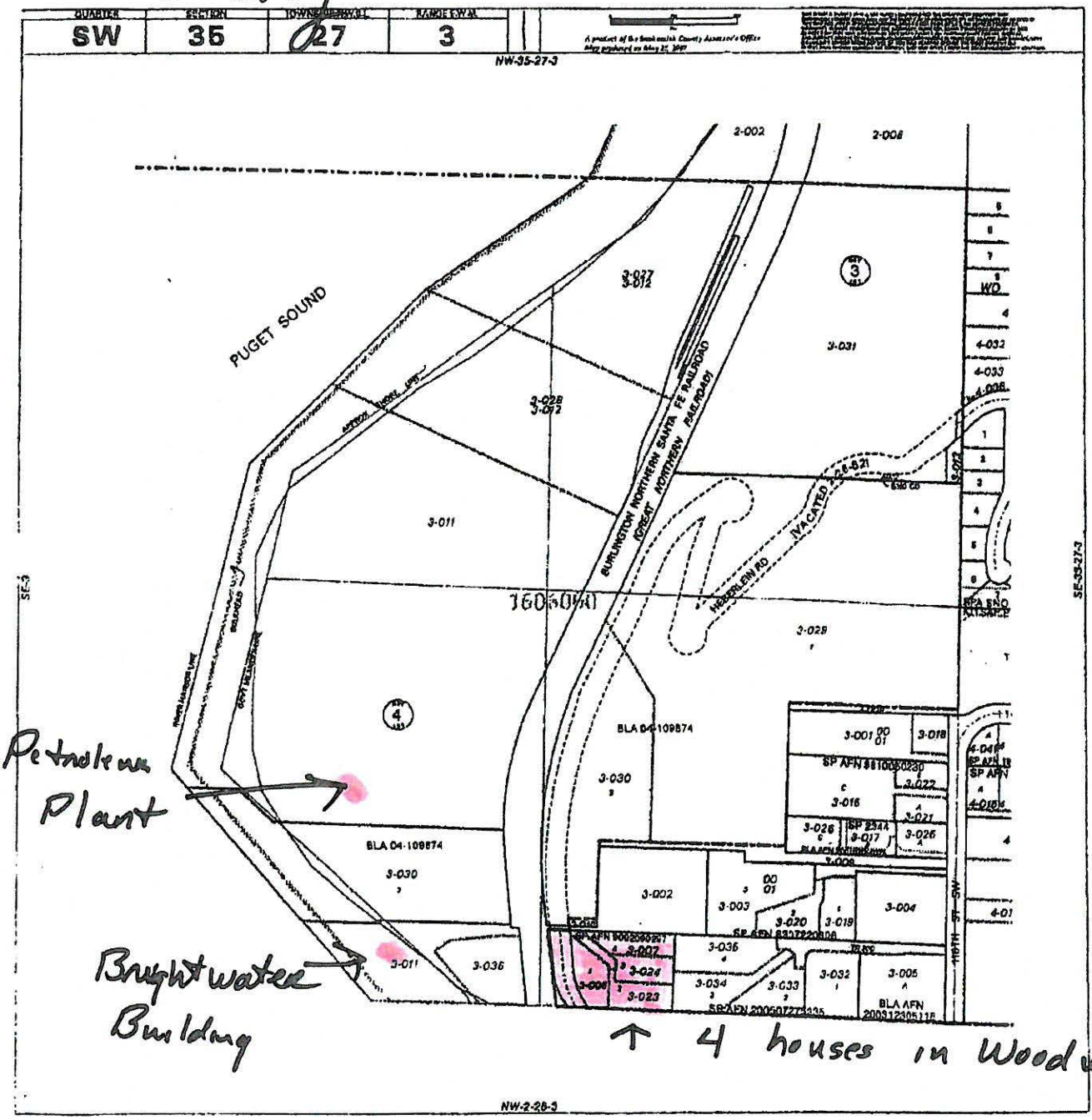
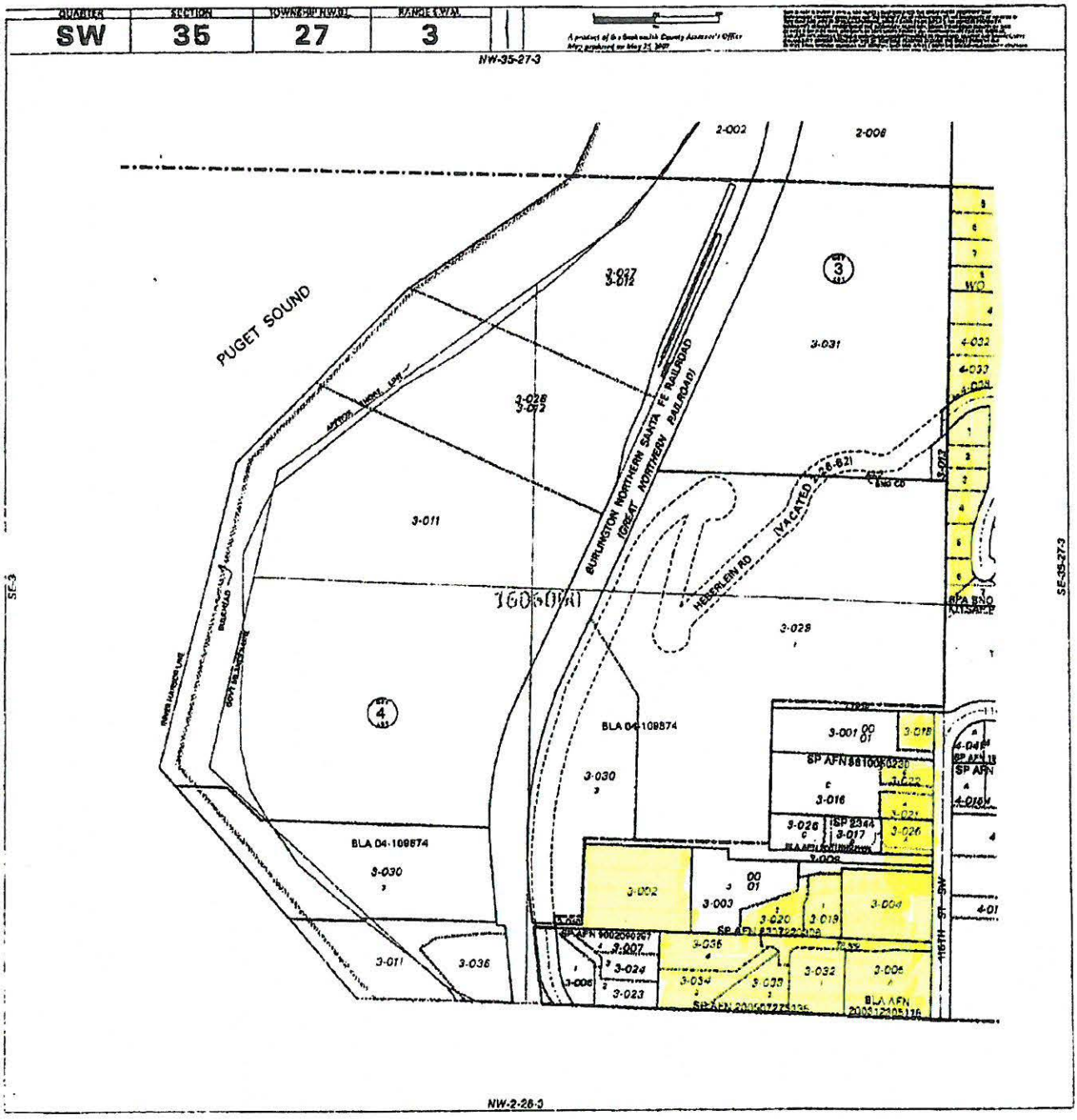
APPENDIX 3

What Ronald Serves In Snohomish County



APPENDIX 4

Olympic View Customers



APPENDIX 5

The Honorable Hollis Hill
Hearing Date: April 14, 2017 at 10:00 AM

SUPERIOR COURT IN THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

RONALD WASTEWATER DISTRICT, a Washington municipal corporation, Plaintiff, v. OLYMPIC VIEW WATER AND SEWER DISTRICT, a Washington municipal corporation; SNOHOMISH COUNTY, a Washington municipal corporation; KING COUNTY, a Washington municipal corporation; CITY OF SHORELINE, a Washington municipal corporation; and TOWN OF WOODWAY, a Washington municipal corporation, Defendants.	No. 16-2-15331-3 SEA ~~[PROPOSED]~~ ORDER AND JUDGMENT GRANTING RONALD WASTEWATER DISTRICT'S MOTION FOR PARTIAL SUMMARY JUDGMENT & DECLARATORY JUDGMENT AND DENYING SNOHOMISH COUNTY'S AND WOODWAY'S MOTIONS FOR SUMMARY JUDGMENT

I. ORDER AND JUDGMENT

This matter came on before the Court on the Motion for Partial Summary Judgment and Declaratory Judgment filed by Plaintiff Ronald Wastewater District ("Ronald") and the cross-motions for summary judgment filed by Snohomish County and the Town of Woodway ("Woodway"). This Court having considered the pleadings in this case, and being fully advised herein, now, therefore IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

Van Ness Feldman LLP
719 Second Avenue, Suite 1150
Seattle, WA 98104
(206) 623-9372

1. Ronald's Motion for Partial Summary Judgment and Declaratory Judgment ("Motion") is GRANTED as set forth below. There is no material dispute of fact regarding the issues raised in the Motion, and Ronald is entitled to judgment as a matter of law. The cross-motions filed by Snohomish County and Woodway are DENIED.

2. On November 20, 1985, this Court issued an Order Approving Transfer of Sewer System in King County Superior Court Case No. 85-2-17332-5 (the "1985 Transfer Order"). A copy of the 1985 Transfer Order is attached hereto as Exhibit A. The 1985 Transfer Order approved an agreement between Ronald and King County setting forth the terms and conditions for the transfer of the Richmond Beach Sewer System from King County to Ronald (the "1985 Transfer Agreement"). A copy of the 1985 Transfer Agreement is attached hereto as Exhibit B. The geographic extent of the territory annexed to Ronald's corporate boundary, which is legally described in Addendum A, is referred to as the "Point Wells Service Area." This transfer was pursuant to HH express statutory authority.

3. As of January 1, 1986, the 1985 Transfer Order lawfully transferred the Richmond Beach Sewer System to Ronald and annexed the Point Wells Service Area to Ronald's corporate boundary. The arguments raised by Defendants Snohomish County, the Olympic View Water and Sewer District ("Olympic View"), Woodway, and the City of Edmonds ("Edmonds") (collectively the "Snohomish County Defendants") challenging the validity of the 1985 Transfer Order are without merit.

4. As of January 1, 1986, the 1985 Transfer Order was a final judgment "in rem" that was binding "against the world," including the Snohomish County Defendants. Therefore, the Snohomish County Defendants are barred by principles of res judicata from challenging the validity of the 1985 Transfer Order in any event. CR 54(a)(1)

HH

Van Ness Feldman
710 Second Avenue, Suite 1150
Seattle, WA 98104
(206) 623-9372

5. As of July 1, 1997, RCW 57.02.001 had the effect of validating and ratifying Ronald's annexation of the Point Wells Service Area, rendering moot any defect in the 1985 Transfer Order.

6. The Snohomish County Defendants are barred by equitable principles, including the doctrines of estoppel, laches, and acquiescence, from challenging the validity and binding effect of the 1985 Transfer Order.

7. The Court therefore grants partial summary judgment and declaratory judgment in favor of Ronald on its First Claim for Declaratory Judgment (Claim XI). The Court dismisses Olympic View's and Woodway's second counterclaims, which address the same issues raised in Ronald's Motion, with prejudice.

DATED this 9th day of May, 2017.

JUDGE HOLLIS HILL

Presented by:

VAN NESS FELDMAN LLP

Duncan M. Greene, WSBA #36718
H. Ray Liaw, WSBA #40725

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Van Ness Feldman
719 Second Avenue, Suite 1150
Seattle, WA 98104
(206) 623-9372

The Honorable Hollis Hill
Hearing Date: May 17, 2017
Without Oral Argument

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR KING COUNTY

RONALD WASTEWATER DISTRICT, a Washington municipal corporation,

Plaintiff/Counter-defendant,

v.

OLYMPIC VIEW WATER AND SEWER DISTRICT, a Washington corporation; and TOWN OF WOODWAY, A Washington municipal corporation,

Defendants/Counter-plaintiffs,

And

SNOHOMISH COUNTY, a Washington municipal corporation; KING COUNTY, a Washington municipal corporation; CITY OF SHORELINE, a Washington municipal corporation,

Defendants,

And

CITY OF EDMONDS, a Washington municipal corporation,

Intervenor.

NO. 16-2-15331-3 SEA

~~[PROPOSED]~~ ORDER DIRECTING THE ENTRY OF THE COURT'S MAY 9, 2017 JUDGMENT AND ORDER AS A FINAL JUDGMENT UNDER CR 54(B); STAYING FURTHER PROCEEDINGS PENDING FINAL RESOLUTION OF THE APPEAL; AND DENYING SHORELINE'S MOTION TO AMEND THE CASE SCHEDULE AND CONTINUE TRIAL

This matter having come before the Court on the Motion of the Defendant/Counter

OGDEN MURPHY WALLACE, P.L.L.C.
901 Fifth Avenue, Suite 3500
Seattle, Washington 98164-2008
Tel: 206.447.7000/Fax: 206.447.0215

Plaintiff Town of Woodway for certification under CR 54(b) of the final judgment on the partial summary judgment and declaratory judgment in favor of Plaintiff Ronald on its First Claim for Declaratory Judgment (Claim XI) and Dismissal of Defendant Olympic View Water and Sewer District's and the Town of Woodway's Second Counterclaims per the Court's May 9, 2017 Partial Summary Judgment and Declaratory Judgment Order ("the May 9 Order") and to stay proceedings in this court pending a final resolution of the appeal of the May 9 Order; and the Court finding that:

1. The legal questions addressed by the Court in determining the claims adjudicated in the May 9 Order of this Court relate to ~~arcane~~ issues of municipal law and statutes relating to systems of sewerage operated by counties and districts for which there is little or no guidance in Washington State law. The May 9 Order address issues of first impression involving a controlling question of law as to which there was a substantial difference of opinion between the Plaintiff and the Snohomish County Defendants. These issues are relevant to other pending administrative proceedings and involve important issues involving the public interest in Snohomish County. Appellant guidance would materially advance the ultimate termination of this litigation.

2. The adjudicated claims in the May 9 Order were and remain critical and/or controlling in any adjudication of the remaining claims; and

3. The questions before the reviewing appellate court(s) on appeal are not before the court for determination in the unadjudicated portion of the case; and

4. The need for review of the May 9 Order would not be mooted by further

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developments in the trial court on the unadjudicated claims; and

5. An immediate appeal has the advantage of a judicial review of controlling questions of law as to (a) whether or not the 1985 King County Superior Court Order and Transfer Agreement lawfully transferred the Richmond Beach Sewer System to the Ronald Wastewater District and annexed the Point Wells Service Area as described in the Transfer Agreement to Ronald's corporate boundary; and (b) whether or not the 1985 Transfer Order was a final judgment "in rem" that bars the Snohomish County Defendants by principles of res judicata from challenging the validity of the 1985 Transfer Order. There is substantial ground for a difference of opinion on these controlling questions of law and immediate review of the May 9, 2017 Order may materially advance the ultimate termination of the litigation even though the immediate appeal and stay of trail court proceedings will delay any trial of the unadjudicated claims.

6. The practical beneficial effects of an immediate appeal and stay of proceedings in this court include the promotion of judicial economy by allowing pending proceedings before the Snohomish County Boundary Review Board on the proposed assumption by the City of Shoreline of Ronald's corporate territory and service area in Snohomish County and the Snohomish County Superior Court's review of the Growth Management Hearings Board decision that Snohomish County Councils approval of Olympic View's comprehensive sewer plan was an unlawful defacto amendment of the Snohomish "County Comprehensive Plan to be completed prior to any adjudication of the remaining claims before this court and by allowing for the review of controlling questions of law concerning arcane statutes affecting districts, counties and cities upon which there is little or no case law before adjudication of the remaining claims

OGDEN MURPHY WALLACE, P.L.L.C.
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Seattle, Washington 98164-2008
Tel: 206.447.7000/Fax: 206.447.0215

regardless of which party (ies) prevail on appeal

which include claims for injunctive relief. Moreover, if the appellants are successful; there may be no need for a trial on the unadjudicated claims.

Based upon the above findings, the Court has determined that the motion by the City of Woodway should be granted, and the relief requested in the motion granted, now, therefore,

The Court, now, hereby ORDER AND ADJUDICATES AS FOLLOWS:

1. The Court directs that its judgment/order of May 9, 2017 (attached hereto) is a final judgment on the claims decided therein. There is no just reason for delay of appellate review.

2. The June 26,2017 trial date is cancelled and further proceedings, including amendment of the case schedule is stayed pending the completion of appellate review of the court's May 9 Order; Provided, the parties shall either enter a stipulation of counsel as to the documents or other evidence called to the attention of the trial court but not designated in the May 9 Order or present a supplemental order to the Court designating such documents or other evidence.

3. Defendant Shoreline's Motion to Amend Case Schedule is denied.

DATED this 18th day of May, 2017.

KING COUNTY SUPERIOR COURT

By _____
Honorable Hollis Hill, Judge

Presented by:

OGDEN MURPHY WALLACE,PLLC

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Greg A. Rubstello, #6271
Attorneys for Defendant Town of Woodway

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

In Re the Transfer of the Richmond Beach Sewer System	NO. 85-2-17332-5 ORDER APPROVING SEWER SYSTEM TRANSFER

This matter came on for hearing upon joint petition of King County and the Ronald Sewer District (hereinafter the "District") to approve transfer of the Richmond Beach Sewer System (the "System") from King County to the District.

Based upon the record herein and the evidence received, the Court finds that petitioners have entered into an agreement which would transfer all ownership and maintenance authority regarding the System from King County to the District and that the governing body of the District and the legislative body of the County have approved this transfer agreement. The Court further finds that said transfer agreement is legally correct and that there are no owners of related indebtedness to be protected, now, therefore,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. The transfer agreement between the parties is approved.

NORM MALENG
Prosecuting Attorney
CIVIL DIVISION
[illegible]

2. The transfer of the System is to be accomplished in accordance with the transfer agreement effective as of January 1, 1986.

3. As provided in the transfer agreement, the area served by the System shall be annexed to and become a part of the District on the effective date of the transfer.

DATED this 20th day of November, 1985.

JUDGE/COMMISSIONER

Presented by:

NORM MALENG
King County Prosecuting Attorney

By _____
JACK E. JOHNSON
Deputy Prosecuting Attorney
Attorneys for King County

NORM MALENG
Prosecuting Attorney
CIVIL DIVISION
[illegible] King County Courthouse
Seattle, Washington 98104
(206) [illegible]

AGREEMENT TRANSFERRING SANITARY SEWER SYSTEM

THIS AGREEMENT is made and entered into by and between King County, hereinafter called the "County" and Ronald Sewer District, hereinafter called the "District". The purpose of this agreement is to transfer a sanitary sewer system and operated by the County to the District for its ownership and operation. This agreement is based upon the following facts, recognized by both parties:

1. The County is a home-rule charter county under the laws of Washington. It is authorized to own and operate sanitary sewer systems, and to transfer such ownership and operation, under RCW 36.94.

2. The District is a sewer district organized pursuant to RCW Title 56 and authorized to accept transfer and to own and operate a sanitary sewer system.

3. The system which is the subject of this agreement is commonly known as the Richmond Beach sewer system (hereinafter called the "System"). At the time of this agreement, the System serves approximately 1,022 customers directly and serves others by developer extension agreements. For purposes of this agreement the "area served" by the System shall mean those parcels of property within the boundaries described in Addendum A, which is attached hereto and incorporated herein by this reference.

4. As part of the System, the County owns a combination of sanitary sewer lines, manholes, side sewers, lift stations and necessary appurtenances which have been installed within the boundaries of the System.

5. In addition to the integral components of the System described in paragraph 4, the County owns certain maintenance and

office equipment and supplies associated with the System, which are described in Addendum B, which is attached hereto and incorporated herein by this reference.

6. The County owns certain easements of record which permit it to construct and maintain the System's facilities on private property.

7. The County currently has a fund balance of approximately $115,000 associated with the System. This fund is derived from all revenues, permit fees, and operation and maintenance charges generated by the System and is used only to pay the expenses of the System such as debt service and operation and maintenance costs.

8. The County has certain contractual rights and obligations in connection with the system. These rights and obligations arise under the agreements which are attached as Addenda C and D, and incorporated herein by this reference.

9. The District has submitted a proposal received June 22, 1983, to accept the transfer of the System from the County. A copy of this proposal is attached hereto as Addendum E, and incorporated herein by this reference.

10. The King County Council, by Ordinance No. _____ has found that the transfer of the System to the District under the terms herein would be in the public interest and conducive to the public health, safety, welfare, and convenience.

11. The District by Resolution No. 83-21 has also found that such a transfer would be in the public interest and conducive to the public health, safety, welfare, and convenience.

NOW THEREFORE, the parties hereby agree as follows:

A. All sanitary sewer lines, manholes, side sewers, lift stations, and necessary appurtenances owned by the County in connection with the System shall hereby be transferred to and become the property of the District. For any such facilities which have been constructed on County road right-of-way, the District shall be permitted to continue to use that portion of right-of-way for the purpose of operating and maintaining the facilities.

B. All maintenance and office equipment and supplies described above shall hereby be transferred to and become the property of the District. The County shall also make available all records necessary for operation of the System, and shall make available to the District, for a period of two months, County personnel needed to assist in identifying, organizing and checking said records.

C. All rights to easements owned by the County in connection with the System shall be and are hereby conveyed, assigned, and transferred to the District.

D. The County will keep segregated and will transfer to the District any fund balance associated with the System at the time of the transfer, less an amount required to cover the County's costs of terminating its operation of the System. Such termination costs are estimated to be $ 9200.00 The County will also assign to the District all accounts receivable or other debts owed to the County in connection with the System, together with any security interests or liens securing payment of such debts.

E. All the County's rights and obligations under the contracts above are hereby assigned and delegated to the District.

F. The District shall assume responsibility for providing the sanitary sewer services for the System, including the maintenance, operation, and all other administrative and financial duties associated with the System.

G. The District agrees to accept the System "as is," with no warranty from the County as to the physical condition, efficiency, capacities, freedom from defect, or fitness of any element of the System or of the System as a whole. Any necessary repairs, modifications, or improvements to the System will be the responsibility of the District.

H. The District shall not compel sewer connection or impose sewer charges without connection for any parcels with existing septic systems within the area served by the System but not now connected to the System. This paragraph shall not limit the District's authority to make assessments or require connections as part of the formation of a Utilities Local Improvement District, nor shall it limit the authority of the King County Health Department to compel sewer connection under conditions specified by its regulations.

I. The District shall abide by the terms of the proposal submitted as described above, except where it conflicts with the terms of this agreement, in which case this agreement shall control. In addition to the rate structure described in its proposal, the District shall ensure that for at least two years, senior citizens shall be charged rates no higher than those they are currently charged by the County, except to the extent of Metro rate increases.

J. The transfer provided for by this Agreement shall take effect _____, 19___. The District recognizes, however, that the transfer of the System is part of an effort by the County to simultaneously transfer to other agencies all sewer facilities currently operated by the County. If any or all such other transfers are delayed, prevented or cancelled for any reason, the transfer provided for herein shall not be effective unless or until all such transfers occur.

K. The area served by the System shall be deemed annexed to and a part of the District as of the above-stated effective date.

KING COUNTY	DISTRICT
by: _____	by: James E. Lindau
its: _____ Title	its: Pres. Title

Approved as to form:

_____
JACK G. JOHNSON
Deputy Prosecuting Attorney

LEGAL DESCRIPTION
Richmond Beach Sewer System

ALL that portion of Section 1, Township 26 North, Range 3 East, W.M. lying Westerly of that area annexed to Ronald Sewer District by Resolution No. 28106.

TOGETHER WITH all that portion of Section 2, Township 26 North, Range 3 East, W.M. lying Easterly of the Puget Sound shoreline EXCEPT those areas already annexed to Ronald Sewer District by Resoltuions No. 909 and 83-53.

All being located in King County, Washington.

ALSO TOGETHER WITH all those portions of Section 35, Township 27 North, Range 3 East, W.M. Snohomish County, Washington described as follows:

That portion of the SW 1/4 of said Section 35 lying Westerly of the corporate limits of the City of Woodway as established February 26, 1958.

TOGETHER WITH, all that portion of said SW 1/4 of Section 35, described as follows: Beginning at a point at the intersection of the South line of said Section 35, with the Easterly right of way line of the Great Northern Railway Company; thence East along the South line of said Section 35, a distance of 365 feet; thence North 247.5 feet, more or less, to the North line of the E.L. Reber tract; thence West along the North line of said Reber tract to the Easterly right of way line of the Great Northern Railway Company; thence Southeasterly along the Easterly line of said right of way to the point of beginning, EXCEPT the North 20 feet thereof for road, LESS portion thereof as conveyed to Snohomish County, Washington in Volume 183 of Deeds on page 56 for road right of way and condemned in Superior Court Cause No. 40540; situated in the County of Snohomish, State of Washington.

ADDENDUM A

INVENTORY -- RICHMOND BEACH

K.C. TAG NO.	ITEM	COST	YEAR PURCHASED	APPROX. VALUE
81657	Rodding Trailer	$388.50	1970	$800.00
81653	3" Diaphragm Pump	490.00	1973	200.00
87059	IBM Typewriter SN 6344482	886.10	1979	

ADDENDUM B

APR 1 6 1984

APR 2 6 1984

King County Executive
Randy Revelle

Department of Public Works
Donald J. LaBelle, Director

April 12, 1984

Chevron U.S.A., Inc.
P.O. Box 125
Edmonds, WA 98020

Attention: Mr. Lloyd Heinz, Terminal Manager

Gentlemen:

In 1971, Chevron USA, Inc. and King County (Sewerage and Drainage Improvement District No. 3) signed the enclosed agreement regarding the installation, operation and maintenance of a sewage lift station on Standard Oil property at Point Wells. Page 2, paragraph 3 of this agreement states that the grant of right of way and easement to the District shall not be transferred by the District without written consent of Standard. This letter requests your consent to transfer this right of way and easement to another governmental agency.

King County has completed preliminary work on a proposal to divest County government of operation of its five sanitary sewer collection systems to other agencies. The Ronald Sewer District has submitted a proposal to acquire the Richmond Beach sewer system, which would include the lift station on your property.

There are still several steps to be completed, including public meetings, execution of transfer agreements, and action by the King County Council and the Superior Court approving the agreements. If all these processes are accomplished as planned, the systems would be transferred on January 1, 1985.

Because this transfer is being pursued and because of the importance of the lift station to the system's operation, we are asking for your consent to transfer the right of way and easement to Ronald Sewer District if the transfer of the system is completed. There would be no change in the use of the property and, of course, Ronald Sewer District would be subject to all the terms of the existing agreement.

If you approve of this transfer, please sign below and return this to me. We will notify you if, and when, the transfer is actually effected.

If you have any questions, please call me at 344-4050.

Sincerely,

Sandra L. Adams
SANDRA L. ADAMS
Utilities Administrator

SLA:mw

APPROVED, Consent Given

J. R. Kaerber
Name

4-25-84
Date

500 King County Administration Building, 500 Fourth Avenue, Seattle, Washington 98104, (206) 344-2517

ADDENDUM C

THIS AGREEMENT, dated the 11th day of October, 1971, by and between STANDARD OIL COMPANY OF CALIFORNIA, a corporation, hereinafter called "Standard", and SEWERAGE AND DRAINAGE IMPROVEMENT DISTRICT NO. 3 OF KING COUNTY, STATE OF WASHINGTON, hereinafter called the "District",

WITNESSETH:

WHEREAS, Standard and the District entered into an agreement dated September 17, 1970 involving the installation of a new sewage lift station on Standard's real property, near the southerly entrance of Standard's Marine Terminal at Point Wells, Snohomish County, Washington; and

WHEREAS, the installation of said lift station was completed by Standard on June 7, 1971; and

WHEREAS, on June 8, 1971, the District acquired title to said lift station and is to operate and maintain the same as set forth in said agreement dated September 17, 1970; and

WHEREAS, the parties hereto wish to enter into an agreement pertaining to the District's right to maintain said lift station on Standard's real property.

NOW, THEREFORE, in consideration of the premises, covenants and conditions hereinafter set forth, it is mutually agreed as follows:

1. Standard hereby grants to the District a non-exclusive right of way and easement to maintain, operate, repair, replace and remove said lift station on that certain portion of Standard's real property situate in Snohomish County, State of Washington, in the South Half ($S\frac{1}{2}$) of the Southwest Quarter ($SW\frac{1}{4}$) of Section Thirty Five (35), Township Twenty Seven (27) North, Range Three (3) East, and more particularly described as follows:

> Beginning at the intersection of the east line of Koberlein County Road and a line parallel to and 257.50 feet north of the south line of Section 35, Township 27 North, Range 3 East, W.M., thence N 6° 56' 30" W, 23.00 feet, thence S 83° 03' 30" W, 12.00 feet, thence S 6° 56' 30" E, 21.44 feet, thence S 89° 30' 46" E, 12.10 feet to the point of beginning.

ADDENDUM D

2. The District shall not interfere with or obstruct the use of said premises by Standard or injure or interfere with any person or property on or about said premises. No structures, facilities, or improvements shall be erected or placed by the District on or above the natural surface of the above-described property, with the exception of covered manholes.

3. This grant of right of way and easement is personal to the District and shall not be assigned or transferred by the District voluntarily, by operation of law, by merger or other corporate proceedings, or otherwise, in whole or in part, without the written consent of Standard first being had. No written consent of Standard hereunder shall be deemed a waiver by Standard of any of the provisions hereof, except to the extent of such consent.

4. Upon the violation by the District of any of the terms and conditions set forth herein and the failure to remedy the same within thirty (30) days after written notice from Standard so to do, then at the option of Standard this agreement and the rights herein given the District shall forthwith terminate.

5. Upon the termination of the rights herein given, the District shall at its own risk and expense remove said lift station and any other property placed by or for the District upon said premises hereunder, will promptly and properly refill all excavations, and restore said premises as nearly as possible to the same state and condition they were in prior to the installation of said lift station, but if the District should fail so to do within six (6) months after such termination, Standard may so do at the risk of the District, and all cost and expense of such removal and the restoration of said premises as aforesaid, together with interest thereon at the rate of ten per cent per annum, shall be paid by the District upon demand; and in case of a suit to enforce or collect the same, the District agrees to pay Standard in addition a reasonable attorney's fee to be fixed and allowed by the court.

6. Upon the termination of the rights herein given, the District shall execute and deliver to Standard within thirty (30) days after service of a written demand therefor a good and sufficient quitclaim deed to the rights herein given. Should the District fail or refuse to deliver to Standard a quitclaim deed, as aforesaid, a written notice by Standard reciting the failure or refusal of the District to execute and deliver said quitclaim deed as herein provided and

terminating this agreement shall, after ten (10) days from the recordation of said notice, be conclusive evidence against the District and all persons claiming under the District of the termination of the rights herein given.

7. The District shall pay, before the same become delinquent, all charges, taxes, rates and assessments upon or against said lift station and any other property or improvements placed by or for the District upon said premises hereunder, but Standard may at all times after any delinquency pay and discharge all of such delinquent charges, taxes, rates and assessments after reasonable verification thereof, and all such payments so made by Standard, with interest thereon at the rate of ten per cent per annum from the date of payment, shall be paid by the District upon demand. The amount of such payments and interest shall be a charge and lien against said lift station and other property placed by or for the District on said premises, and in case of a suit after such demand to enforce or collect the same, the District agrees to pay Standard in addition thereto a reasonable attorney's fee to be fixed and allowed by the court.

8. The District agrees to defend, indemnify and hold Standard, its officers and employees, and each of them, harmless from and against all liability or claims thereof for loss of or damage to property (to whomever belonging) or injury to or death of person proximately caused in whole or in part by any negligence of the District or its contractors, or by any acts for which the District or its contractors are liable without fault, in the exercise of the rights herein granted; save and except in those instances where such loss or damage or injury or death is proximately caused in whole or in part by any negligence of Standard or its contractors, or by any acts for which Standard or its contractors are liable without fault.

9. The District hereby recognizes Standard's title and interest in and to said premises and agrees never to assail or resist Standard's title or interest therein.

10. This agreement shall commence June 8, 1971 and shall continue thereafter until terminated by mutual agreement of the parties hereto; provided, however, Standard may, at its option, terminate this agreement upon any breach by the District of any provision of said Agreement dated September 17, 1970 and the failure of the District to remedy the same within thirty (30) days

later written notice from Standard so to do.

11. Any written notices to be given by the District to Standard hereunder shall, until further notice from Standard, be addressed to Standard at P. O. Box 125, Edmonds, Washington 98020. Any written notices to be given by Standard to the District hereunder shall, until further notice from the District, be addressed to the District at Department of Public Works 900 County Administration Bldg., Seattle 98104. All such notices shall be delivered in person or deposited in the United States mail, properly addressed as aforesaid, postage fully prepaid, and shall be deemed given when so deposited.

12. Except as otherwise provided herein, the term and conditions of this agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.

13. This grant is made subject to all valid and existing licenses, leases, grants, exceptions, reservations and conditions affecting said premises.

IN WITNESS WHEREOF, the parties hereto have executed this agreement in triplicate.

STANDARD OIL COMPANY OF CALIFORNIA

By C. T. Smith
Contract Agent

By L. W. Hansen
Asst Secretary

SEWERAGE AND DRAINAGE IMPROVEMENT DISTRICT NO. 3 OF KING COUNTY, STATE OF WASHINGTON

By J. L. DeSpain
J. L. DeSpain, P.E., Director
Department of Public Works

COPY

RONALD SEWER DISTRICT
Resolution No. 83-21

A Resolution of the Board of Commissioners
Authorizing Transmission of Proposal for
Acquisition of King County Sewer District No. 3

WHEREAS, King County operates King County Sewer District No. 3 adjacent to the Ronald Sewer District under the provisions of Title 85 RCW and has solicited a proposal from the District to divest the County of King County Sewer District No. 3; and

WHEREAS, the Board of Commissioners has made an investigation of the records of King County Sewer District No. 3 as supplied by King County and of the rates which would be necessary to maintain the King County Sewer District No. 3 facility in accordance with standards established by the policies of the District; and

WHEREAS, this Board of Commissioners finds that acquisition of King County Sewer District No. 3 will be of benefit to the District and King County Sewer District No. 3; now, therefore, it is hereby

RESOLVED that the Proposal for Acquisition of King County Sewer District No. 3 by the Ronald Sewer District, attached hereto as Exhibit A and by this reference incorporated herein, is hereby approved by the Board of Commissioners of the Ronald Sewer District; and it is

FURTHER RESOLVED by this Board of Commissioners that the Proposal for Acquisition of King County Sewer District No. 3 by the Ronald Sewer District shall be transmitted to King County.

ADOPTED by the Board of Commissioners of Ronald Sewer District this 20th day of June, 1983.

ATTEST:

President and Commissioner

Secretary and Commissioner

Vice President and Commissioner

I, the undersigned Secretary of the Board of Commissioners of Ronald Sewer District, a municipal corporation of King County, Washington, DO HEREBY CERTIFY that the foregoing is a true and correct copy of Resolution No. 83-21 of said Board, duly adopted on June 20, 1983, at its regular meeting.

Secretary and Commissioner

Attachment
Page 1 of 1

1. RATE TO BE APPLIED

a) Ronald's 1983 rate is $2.55/MTH per residential C.E. except ULID 14 (surcharge $1.00/MTH per C.E. for O & M of 8 pump stations). The 1984 District rate proposed is $2.95 plus Metro.

b) Rate of K.C. #3 will include a $2.00 surcharge. A surcharge of $2.00 per month will be levied and should raise approximately $26,400 a year.

The following immediate actions will be required as a result of the take-over:

One additional Maintenance Technician Salary plus fringe - $32,905.60/yr.

Conversion of Lift Station Telemetering equipment

Conversion of Lift Stations for emergency generator operation

Minimum upgrade, if necessary

Field checking and setting up of administrative and maintenance records.

The longer range actions will be determined after a system analysis and evaluation is completed. This will be done in conjunction with our routine maintenance and includes the following:

Location of Firdale line and eliminating excess flow

Identifying potential problem lines

Review of pump time records of all lift stations.

2. LEVEL OF SERVICE

a) The minimum would be consistent with our current operation. However, review of Fact Findings response might indicate additional requirements.

b) Routine activities include flushing, TVing, rodding, inspecting, manhole raising, pump station maintenance, investigating and responding to emergencies and complaints, root and rodent control and any and all other necessary functions.

c) District makes use of outside consultants on "as needed" basis to avoid the top-heavy organization with financial burden on our rate payers.

3. MAINTENANCE STANDARDS AND FREQUENCY

a) Entire system flushed every 1½ years.

b) Pump stations checked and maintained three times a week.

c) Telemetering tested once a month.

d) All other work performed on "as needed" basis.

e) Our standards include heavy emphasis on preventative maintenance and compliance with regulatory agencies.

f) Written procedures are on file in our office and soon will be on word processing.

4. AGENCY'S QUALIFICATIONS TO CONDUCT SEWER SERVICE

Our agency serves a local area. The elected officials reside within our boundaries and are directly responsible to their constituents. We have very fast response time to emergencies as a result of our 24-hour "on call" and the fact that our equipment and personnel are located within 15 minutes' driving time to District. We also work cooperatively with adjacent agencies to provide greater manpower, if needed. A brief biography is attached; in addition, the following pertinent information:

a) Maintenance Personnel

- Required to be certified as Waste Water Operator
- Flag and First Aid Cards mandatory
- Attendance twice a month at in-house safety and training sessions
- Voluntary outside educational programs reimbursed by District

b) Elected Officials

- Members of Washington State Association of Sewer District
- Member of MWPAAC Committee
- Member of Metro Sludge Committee

c) Manager

- Chairs Managers' meetings for Washington State Association of Sewer Districts
- Member of Water Pollution Control Federation and recently participated as author for safety pamphlet to be released at National Conference in Atlanta
- Member of American Public Works Association
- Served on numerous King County committees as a member of the Policy Development Commission
- Served on Citizens Water Quality Committee for Metro

- Served on two Rate Equity Committes for Metro
- Organized committee to write ordinances for confined spaces and developer extensions
- Organized a collection school held at the District Office in 1981 as an extension to Shoreline Community College

d) Equipment and Facilities
- Hi velocity flush truck
- TV equipment in trailer
- Portable rodder
- Two on-site emergency generators and one portable
- Numberous pumps and accessories for by-pass
- Smoke test apparatus
- Safety equipment
- Trucks and van with radio equipment
- Telemetering alarm system for all eight pump stations
- Miscellaneous shop equipment
- Maintenance facility at site of administrative building
- Other too numerous to mention

5. AGENCY COMPREHENSIVE PLAN

On file at King County as required by K.C. Ordinance No. 2638 and 1709.

6. BONDING CAPACITY FOR G.O. AND REVENUE BONDS

District has no G.O. Bonds and therefore bonding capacity not applicable. (1982 Financial Report Enclosed)

7. OBLIGATIONS OR CONDITIONS

All District revenue pledged to outstanding bonds and subject to Ronald's rules and regulations. Additional charges may be levied after evaluation of system, only if upgrade required. All King County #3 bonds will be paid off prior to transfer and balance of funds approximating $85,000 will be transferred to Ronald.

8. DATE OF ACCEPTANCE

January 1, 1984 or open to negotiations.

9. ANY OTHER PERTINENT FACTS

Geographic location allows quicker response to health and environmental threats and provides better and more direct access to elected officials and records pertaining to their system.

NO. 94633-7

SUPREME COURT OF THE STATE
OF WASHINGTON

OLYMPIC VIEW WATER AND SEWER DISTRICT, a Washington municipal corporation; and TOWN OF WOODWAY, a Washington municipal corporation,

Appellants,

v.

RONALD WASTEWATER DISTRICT, a Washington municipal corporation,

Respondent,

and

SNOHOMISH COUNTY, a Washington municipal corporation; KING COUNTY, a Washington Municipal Corporation; CITY OF SHORELINE, a Washington Municipal Corporation,

Defendants.

TOWN OF WOODWAY'S STATEMENT OF GROUNDS FOR DIRECT REVIEW BY THE SUPREME COURT

Greg A. Rubstello, WSBA #6271
Attorneys for Respondent City of Redmond
Ogden Murphy Wallace, P.L.L.C.
901 Fifth Avenue
Suite 3500
Seattle, Washington 98164-2008
Tel: 206-447-7000

TOWN OF WOODWAY ("the Town") seeks direct review of the ORDER AND JUDGMENT GRANTING RONALD WASTEWATER DISTRICT'S MOTION FOR PARTIAL SUMMARY JUDGMENT & DECLARATORY JUDGMENT AND DENYING SNOHOMISH COUNTY'S AND WOODWAY'S MOTIONS FOR SUMMARY JUDGMENT, entered by the King County Superior Court on May 9, 2017.

The issues presented in the review are as set forth in OLYMPIC VIEW WATER & SEWER DISTRICT'S STATEMENT OF GROUNDS FOR DIRECT REVIEW filed on June 26, 2017, at pages 2-3 thereof, which issues the Town agrees and adopts as its own for purposes of this pleading.

The reasons for granting review are also as set forth in OLYMPIC VIEW WATER & SEWER DISTRICT'S STATEMENT OF GROUNDS FOR DIRECT REVIEW filed on June 26, 2017, which reasons (including the supporting Appendix's attached to the pleading) the Town agrees and adopts as its own for purposes of this pleading, with the following modification to the "Introduction" to incorporate the Town's as well as Olympic View's interest in direct review:[1]

[1] The modified introduction remains largely as written by attorney Talmadge on behalf of Olympic View. It is modified to include expression of the Town's concern's as well as the concern's of Olympic View (which the Town shares) with the annexation of Point Wells by Ronald.

A. INTRODUCTION.

The Town seeks direct review of the trial court's May 9, 2017 order, granting partial summary judgment and declaratory relief in favor of Ronald Wastewater District ("Ronald") and dismissing with prejudice the claims for summary judgment by the Town and by Snohomish County ("Snoco"). RAP 4.2(a)(4) and (5).

This case involves issues of public importance relating to a potential municipal annexation area that is proposed for a new "urban center" development in the lower Point Wells area along Puget Sound in the southwest portion of unincorporated Snoco. Both Olympic View Water and Sewer District ("Olympic View") and Ronald claim the right to provide sewer service to the area. Both the Town, with boundaries entirely within Snoco[2] and the City of Shoreline ("Shoreline"), with boundaries entirely with King County ("Kingco") have planned for the future annexation of the area.[3] While Point Wells is presently an industrial area, it is slated for redevelopment with the lower area becoming an "urban center" with thousands of new residents.[4]

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[2] Appendix **Six** hereto is a photograph showing the Town's current boundary (yellow line) in relationship the existing Point Wells Petroleum Tank Farm.

[3] **Appendix Seven** hereto (Appendix numbering is consecutive to the Appendix numbering in Olympic View's Statement of Grounds) is the portion of the Town's existing Comprehensive Plan covering the entire Point Wells area. Woodway has already annexed the "upper bluff" area of Point Wells. **Appendix Eight** is the existing Interlocal Agreement the Town and Snoco concerning annexation and urban development within Point Wells (the Town's Municipal Urban Growth Area ("MUGA")

[4] **Appendix Nine** is a description and status of the permitting of the proposed Urban Center development from the Snohomish County website.

Shoreline has internally planned for a cross county annexation of the Point Wells urban center area,[5] but Snoco has long planned for a different future for that area. It has designated the area for annexation by the Town, because the area is located within the Town's Municipal Urban Growth Area ("MUGA").[6] The entire area at issue is also within Olympic View's corporate boundaries and has been for decades.[7]

At its core, resolution of this case requires the determination of whether a 1985 King County Superior Court order ("Transfer Order"), which allegedly transferred the old Richmond Beach sewer system from Kingco to Ronald resulted in Point Wells' annexation by Ronald and whether that order has preclusive effect against the Town, Snoco and Olympic View ("Snoco defendants"). None of the Snoco defendants were parties to that case or given any notice of the proceeding by Ronald or Kingco. The Transfer Order and the statutes under which that order was

[5] Shoreline is in the process of "assuming" Ronald, taking over Ronald and its services, after which Ronald will cease to exist. RCW 35.13A. Over 99% of Ronald is within Shoreline. Shoreline is using the assumption process and this case to try to establish that Ronald has territory within its corporate boundaries in Snoco. This further its annexation aims so as to skirt Snoco County-Wide Planning Policies (JP-3) that do not allow cross-border annexations by cities with no territory in Snoco unless the city has a interlocal agreement with Snoco. Shoreline does not have such an agreement.

[6] See Appendix Seven and Eight.

[7] Olympic View is the water provider for the area, and can also provide sewer service to customers; it has developed a plan to do so. Most significantly, Olympic viw can offer such services with huge cost savings for future customers in Point Wells. Millions of dollars in hoo-up fees and hundreds of thousands of dollars a year in sewer charges will be saved. Those receiving services would also be able to vote for those who set the rates.

entered are the stated basis by the trial court's for the decision being appealed.[8]

The Transfer Order approved the annexation by Ronald of an area of Point Wells that included a portion of the Town to which Woodway had consented to only to interim service to a four lot residential subdivision until the Town extended its own sewer service to the subdivision. The Town was its own sewer service provider until it transferred its system to Olympic View. The Transfer Order also approved the Town's future annexation area within Point Wells. However, Woodway received no notice of the joint Petition filed by Ronald and KingCo for approval of the Transfer Agreement and Ronald's annexation of this area.

If Ronald has as a matter of law effectuated the annexation of Point Wells by the Transfer Order, the service area annexed, except as within the Town, may be assumed by Shoreline should it obtain Snoco Boundary Review Board (the "BRB") approval. Shoreline's assumption was denied by the BRB in 2014 and denied at second time by oral decision of the BRB on June 22, 2017. A written decision is scheduled by the Board to be issued on July 11, 2017. Should this court reverse the trial court, Ronald will have no territory or sewer service area in Point Wells for Shoreline to assume or to claim prohibits Olympic View from providing sewer service to the urban center development.

[8] See Appendix 5 at paragraph I.2.

Direct review is appropriate because the trial court's determination that the Transfer Order was an *in rem* judgment and that it had preclusive effect contravenes established principles of law established by this Court, involves public issues of significance to multiple public entities and to the public, and involves an action against state officers.

SECTIONS B through E of Olympic View's Statement of Grounds for Direct Review are adopted and incorporated herein as written.

Dated this 27th Day of June, 2017.

Respectfully submitted,

OGDEN MURPHY WALLACE, P.L.L.C.

By: _____

Greg A. Rubstello, WSBA #6271
Attorneys for Respondent City of Redmond

Appendix Six

Appendix Six

A332

Appendix Seven

Appendix Seven

Town of Woodway

Comprehensive Plan

2015 Update

Adopted June 2015

Appendix A
Woodway Municipal Urban Growth Area
Subarea Plan

Town of Woodway

Adopted August 5, 2013

Town of Woodway Municipal Urban Growth Area Subarea Plan-2013

Mayor

Carla A. Nichols

Town Council

William Anderson
Elizabeth Mitchell
Michael Quinn
Kent Saltonstall
Thomas Whitson

Planning Commission

Robert Allen, Chairman
Jan Ostlund, Vice Chair
Jennifer Ange
Tom Howard
Per Odegaard
Pat Tallon
John Zevenbergen

Staff

Eric Faison, Town Administrator
Joyce Bielefeld, Town Clerk
Heidi Napolitino, Deputy Clerk/Planning Commission Secretary
Bill Trimm, FAICP; Town Planner

Table of Contents

Woodway Municipal Urban Growth Area

Subarea Plan

Setting

The Subarea Plan for Woodway's Municipal Urban Growth Area is authorized under the Washington State Growth Management Act and must be consistent with the Town's overall Comprehensive Plan. The subarea includes approximately 97 acres, is situated adjacent to the Town's western border, and extends westward to Puget Sound. For planning purposes, the area is divided into two distinct geographic areas: the "Upper Bluff", defined as the area adjacent to the Town's western border extended westward to approximate contour 100 feet at the Point Wells Development east property line; and the "Point Wells" area, extending west of contour 100 feet/Point Wells Development east property line to the shoreline.

County and Regional Context

The subarea is in unincorporated Snohomish County and surrounded by the Woodway corporate borders on three sides and Puget Sound on the west. In order to meet the provisions of the Growth Management Act to ensure that plans are coordinated, the Snohomish Countywide Planning Policies and the Puget Sound Regional Council's adopted growth strategy (Vision 2040) are used to guide the development of plans and development regulations for the subarea. The Snohomish County Comprehensive Plan designates the subarea as the Woodway Municipal Urban Growth Area (Woodway MUGA).

The Snohomish Countywide Planning Policies provide for the planning, development and annexation of unincorporated land situated in a municipality's UGA/MUGA. Specifically, Countywide Planning Policy DP-5 establishes the factors to be included in comprehensive plans for UGA, and enables cities to prepare and adopt plans and development regulations for Municipal UGAs to which the city or town has determined it is capable of providing urban services at some point in the future via annexation.

Further, policy DP-17 states that *"city comprehensive plans should have policies on annexing the areas in their unincorporated Urban Growth Area/Municipal Urban Growth Area"*. The Puget Sound Regional Council's adopted regional growth strategy, Vision 2040, directs unincorporated lands to annex to affiliated cities with services provided by the adjacent municipality. The Vision 2040 goal for unincorporated urban growth areas states that *"all unincorporated lands within the urban growth area will either annex into existing cities or incorporate as new cities."* Multicounty policies provide for unincorporated lands adjacent to cities to be affiliated with such cities and that annexation is preferred over incorporation. Additional policies support the provision of urban services to unincorporated urban areas by the adjacent city.

Thus, the Woodway Municipal Urban Growth Area Subarea Plan draws on the adopted goals and policies of both the County and Region in creating the plan's stated vision, goals, and policies.

Planning Background

The Town has been engaged in planning for the subarea for many years. In 1999, the Point Wells Advisory Committee was created to work with property owners, residents, and surrounding jurisdictions to prepare for the eventual conversion of the industrial asphalt use to an urban non-industrial use. The Advisory Committee prepared several alternatives for consideration by the Town Planning Commission and Council. The alternatives prepared by the Planning Commission focused on residential uses or passive open space for the upper bluff and a variation of three mixed-use land patterns with varying urban uses and densities for Point Wells. The separate alternative desired by the Point Wells landowner (Chevron-Texaco) was to maintain the current Industrial land use designation as set forth in the Snohomish County comprehensive plan. The Advisory Committee recommended that the Planning Commission select the residential alternative for the upper bluff and to maintain the industrial alternative for the lower bluff. The Town Council adopted the Planning Commission's recommendation with a specific policy in the 2000 Comprehensive Plan that stated the industrial designation

would be used for the near-term but may be amended with a more intensive use when geo-political conditions warrant.

In 2009, Snohomish County received an application to amend its comprehensive plan for Point Wells from Industrial to Urban Center. As part of the Urban Center comp plan designation, the County received an application for the development of a mixed-use urban center. Following a ruling by the Central Puget Sound Growth Hearings Board that Point Wells did not meet the County's criteria for an Urban Center, the County re-designated Point Wells in 2012 to an Urban Village. Pursuant to the County's General Policy Plan, Urban Villages are typically smaller and less intensive than an Urban Center.

The City of Shoreline has also prepared a plan for Point Wells. Shoreline is situated in King County and a portion of the northern boundary of the City's Richmond Beach neighborhood is adjacent to Point Wells. The City prepared a subarea plan for Point Wells in 2011 given that the primary access to Point Wells is via Richmond Beach Drive and that the majority of future transportation trips from Point Wells will impact Shoreline. The plan recognizes the Snohomish County development application of an intensive mixed-use proposal and seeks to mitigate transportation impacts through the preparation of a transportation corridor study. The Shoreline plan also proposes to provide urban services to the area via a future cross-county annexation.

Vision Statement

The planning horizon for the 2013 Comprehensive Plan extends to 2035. The vision to guide land use decision-making throughout the planning period will continue to emphasize a balance between the Town's strong environmental ethic and the preservation and enhancement of its prominent residential neighborhoods.

The vision for Woodway's Municipal Urban Growth Area (Woodway MUGA) focuses on two geographic areas. For the area situated west of the current Town boundaries to the eastern property line of the Paramount Asphalt facility (referred to as the "Upper Bluff"), the vision is the creation of a well-designed single-family residential neighborhood that complements adjacent neighborhood character, preserves public view corridors and environmental critical areas, and provides pedestrian access to the planned neighborhood park/open space. For the portion of the MUGA situated at the foot of the bluff and surrounded by Puget Sound (Point Wells), the vision is to create a unique, world-class, environmentally-sustainable, mixed-use urban village with varying housing types, energy efficient buildings with tiered building heights that preserve public view corridors, sustainable infrastructure, alternative transportation facilities, a restored natural environment, and a waterfront that emphasizes habitat restoration and public access. The urban village will be an inclusive community with well-designed public gathering spaces and exceptional architecture and site amenities. The MUGA will be annexed by the Town and provided with Woodway municipal services.

Subarea Goals and Policies

A set of goals and policies are listed below to enable the community to move forward with land use decisions and actions to meet the intent of the vision statement for the subarea. The goals and policies are updated from the 2004 Comprehensive Plan to address recent planning efforts by surrounding jurisdictions and the new land owner of Point Wells.

LU.Goal-1a. The Upper Bluff is annexed to the Town and developed as a low-density residential neighborhood with high quality architectural design, while preserving public open space and view corridors to the Olympic Mountains and Puget Sound.

LU.Goal-2a. Point Wells is annexed to the Town and developed pursuant to an approved master plan/development application resulting from a coordinated planning effort between the property owner, the Town, the City of Shoreline, and affected property owners. The master plan/development is a well-designed, pedestrian-oriented, sustainable, mixed-use urban village that is supported by adequate infrastructure and complements surrounding neighborhoods.

Land Use Policies

LU.Policy-1a. Work with the property owner to plan for the design, development, and annexation of a new residential neighborhood situated on the Upper Bluff. The new neighborhood will be developed with sustainable site improvements, conform to environmental critical area regulations, include a public passive park/open space overlooking Puget Sound, and be connected to and complementary with existing neighborhoods. The maximum residential density will be five dwelling units per acre.

LU.Policy-2a. Designate the portion of the subarea west of the current corporate limits, including the bluff area affected by steep slopes and environmentally critical areas, as Urban Residential on the Comprehensive Plan Land Use Map. The Urban Residential designation will be implemented with the Town's Urban Restricted zone district, as amended.

LU. Policy-3a A passive neighborhood park/open space is planned within the Urban Residential designation on the upper bluff. The park/open space should be designed as a passive space not less than ½ acre in size that focuses on public viewing areas of Puget Sound and complements the surrounding residential areas. The park shall be dedicated to the Town upon annexation.

LU.Policy-4a. Designate Point Wells as Woodway Urban Village in the Comprehensive Plan Land Use Map. Characteristics of the Urban Village designation include a mix of land uses, integrated into a pedestrian-scaled pattern of sustainable site improvements, infrastructure, buildings, and open space. The predominant use is high density multi-family housing situated in multi-storied buildings with varying heights and strategically sited to preserve and enhance view corridors. Attendant uses include retail, office, transit facilities, structured parking, and public spaces. Site design emphasizes pedestrian circulation throughout the site and shoreline together with restoration of the natural environment.

LU.Policy-5a. Implementation of the Woodway Urban Village designation will occur through the adoption of the Town's Urban Village zone district and the Town's Shoreline Master Program for Point Wells. The zone district will be based upon applicable sections of Snohomish County's development code related to the Point Wells development.

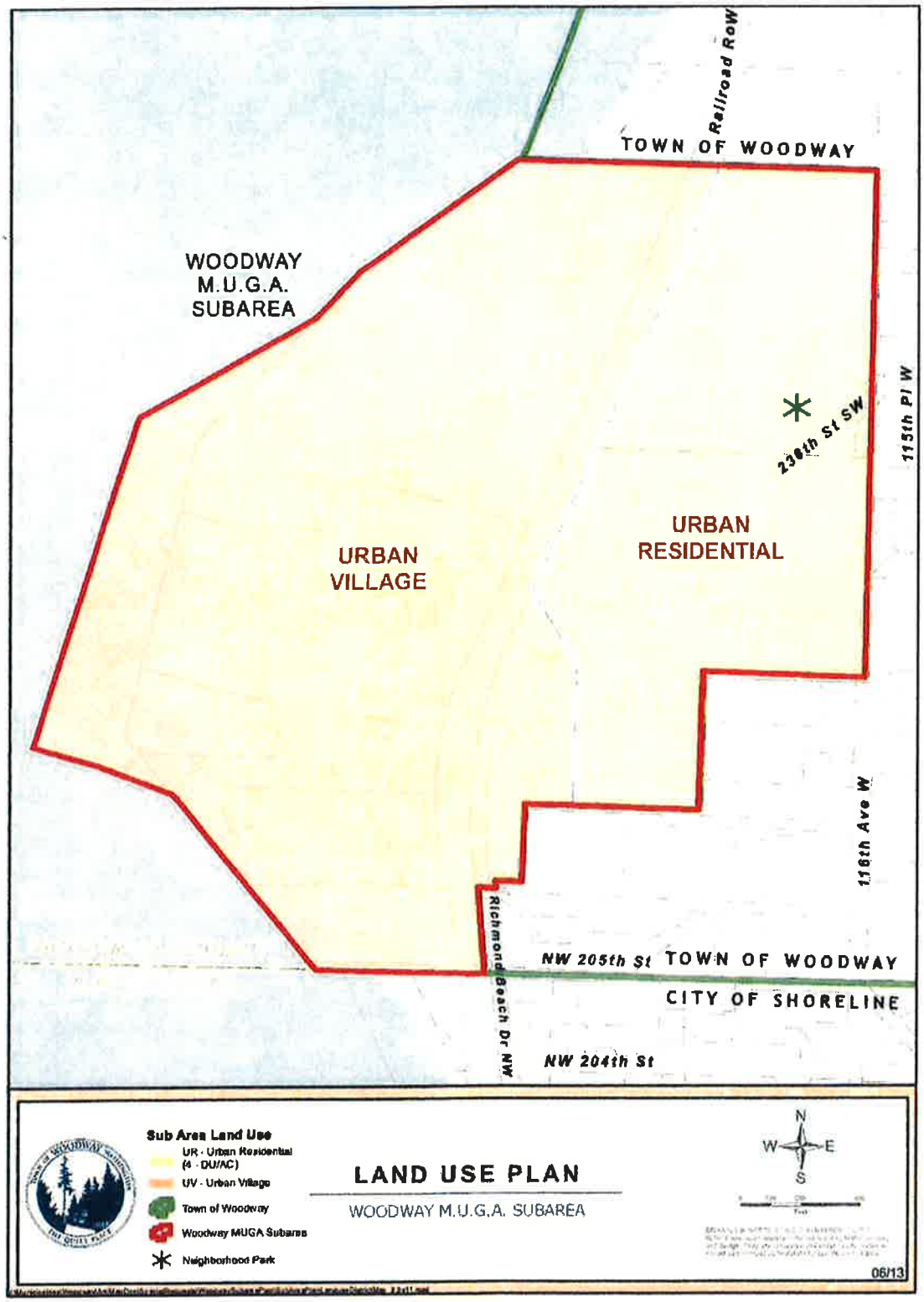
LU.Policy-6a. The Upper Bluff and Point Wells areas are situated in Woodway's Municipal Urban Growth Area and, pursuant to Countywide Planning Policies, is designated as Woodway's urban service area. Services to the area will include fire service from the Town, law enforcement from the Town, sewer and water service from the Town or special purpose districts, and energy through regional providers.

LU.Policy-7a. The Town will continue to engage property owners and surrounding jurisdictions to effectively implement the planned Woodway Urban Village consistent with the subarea vision, goals, policies, and development regulations. The Town will coordinate with affected jurisdictions to define environmental impacts and ensure that such impacts are adequately mitigated.

LU.Policy-8a. The Town herein adopts the Snohomish County Tomorrow Annexation Principles, attached hereto, as a guide for the transition of land and services from Snohomish County to the Town of Woodway. In accordance with such principles, the Woodway MUGA is designated as a high priority for annexation.

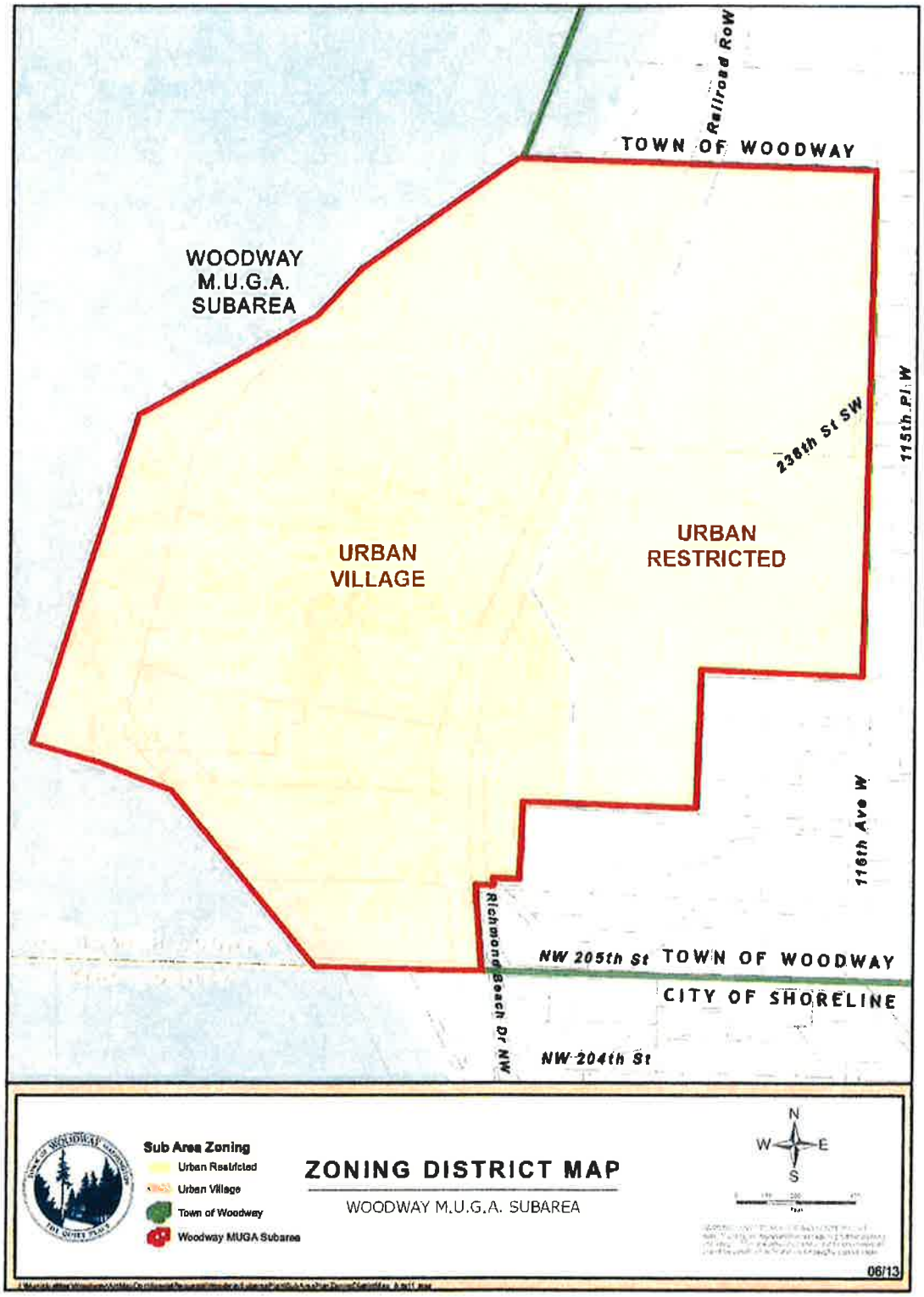
Subarea Land Use Plan Designations

Figure 1



Subarea Zoning Districts

Figure 2



Transportation Policies

T.Policy-1a. Vehicular transportation access to the Upper Bluff will occur through the extension and termination of 238th Street Southwest and via a public street connected to 116th Avenue W. The streetscapes of both streets will be designed with narrow travel lanes, street-side landscaping, and separated pedestrian pathways. Any street lighting will adhere to the Town's Dark Sky policy.

T.Policy-2a. The Town will coordinate with the City of Shoreline, the Richmond Beach Neighborhood, and affected property owners to ensure that transportation improvements related to the development within the Woodway Urban Village zoning district are compatible with the existing adjacent residential neighborhoods.

T.Policy-3a. Transportation impacts associated with development within the Woodway Urban Village shall be fully disclosed in required environmental documents. The Town will coordinate with regional transit and transportation providers to ensure that proposed mitigation measures are complementary and compatible with neighborhood character.

T.Policy-4a. Mitigation measures described in environmental documents to address impacts to the Town's transportation network shall ensure that such measures are consistent with established level of service standards and preserve the Town's streetscape character.

T.Policy-5a. The Town shall work with property owners within and adjacent to the Woodway Urban Village zone district to provide safe and efficient connectivity to the Town's street network, including access for pedestrians and emergency/public vehicles.

T.Policy-6a Surface transportation access shall continue to be provided to the waterfront area through the existing transportation network of Richmond Beach Drive N.W. Future development of Point Wells should be designed to ensure that the maximum vehicle trips per day do not exceed the LOS stated in the transportation element.

Capital Facilities/Utility Policies

CF/U.Policy-1a. The Town will provide capital facilities to serve the projected needs of the subarea population. Capital facilities anticipated to serve the Upper Bluff will include local public streets; stormwater, water, and sewer facilities; and a neighborhood park. Fire protection, emergency medical services, and police protection will be provided from facilities located outside of the subarea.

CF/U.Policy-2a. Capital facilities that will serve the existing land uses at Point Wells will include public streets and stormwater facilities. As new development is proposed, the Town will negotiate with development proponents to determine which, if any, of required new capital facilities will be dedicated to the Town and which will remain private. All planned capital facilities for Point Wells shall be coordinated with the Town's current service providers.

CF/U.Policy-3a. The Town will work with sewer and water providers to transfer administrative services to the Town.

CF/U.Policy-4a. All proposed electric and communication line extensions to the subarea shall be installed underground in public rights of way or utility easements. All underground utility installations outside of public rights of way shall be improved with appropriate landscaping.

CF/U.Policy-5a. The Town will work with regional utility providers to ensure an appropriate level of service to Town residents. Major utility facilities shall be appropriately landscaped and where possible, screened from public views.

Conservation Policies

C.Policy-1a. Conservation and preservation of natural resources shall be a major consideration in planning land developments throughout the subarea. The landslide hazard areas and wetlands situated in the Upper Bluff shall be designated by qualified professionals with buffers and building setbacks as regulated by the Town's environmental policies and regulations.

C.Policy-2a. The landslide hazard area associated with the upper bluff is an important environmental corridor and wildlife habitat. Future land development in the subarea shall prepare environmental studies for the corridor to ensure the long-term preservation of wildlife and associated habitat.

C.Policy-3a. The redevelopment of Point Wells from the current industrial petroleum-related use to a future mixed-use urban village will require an extensive environmental clean up to ensure the suitability for residential and public use. The Town will coordinate with federal and state environmental agencies responsible for monitoring clean-up efforts to ensure that all hazardous material has been adequately removed prior to any permit issuance by the Town.

C.Policy-4a. Site development and building construction shall adhere to the highest level of sustainability certification (US Green Building Council) for the design, construction, and operation of buildings, homes, and neighborhoods.

Future Subarea Plan Amendments

The subarea plan is the official public policy of the Town that provides direction to public agencies and the general citizenry concerning the use, servicing and conservation of land with the geographic boundaries of the subarea. It has been prepared in accordance with the Washington State Growth Management Act, the Puget Sound Regional Council Growth Strategy as prescribed in Vision 2040 and the Snohomish County Countywide Planning Policies.

Consistent with state law and the Town's municipal code, the subarea plan and attendant development regulations will be reviewed and evaluated on occasion to ensure it is up to date and addresses current issues. When revisions to the plan are necessary, the Town will utilize the process set forth in the Woodway Municipal Code at Section 15.04 to entertain and process amendment requests.

Appendices

Snohomish County Tomorrow Annexation Principles

The following principles are intended as a "roadmap" for successful annexations but are not intended to require cities to annex all UGA lands. The desired outcome will reduce Snohomish County's current delivery of municipal services within the urban growth area while strengthening the County's regional planning and coordinating duties. Likewise, cities/towns will expand their municipal services to unincorporated lands scattered throughout the UGAs in Snohomish County. These principles propose altering historical funding and service delivery patterns. All parties recognize that compromises are necessary.

1. The County and all Snohomish County cities will utilize a six-year time schedule which will guide annexation goals. This work will be known as the Six Year Annexation Plan. As follow-up to the county's Municipal Urban Growth Area (MUGA) policies, those cities that have a (MUGA) land assignment, should designate this land assignment a priority. Each jurisdiction shall conduct its normal public process to ensure that citizens from both the MUGA areas and city proper are well informed. All Snohomish County cities have the option of opting in or out of this process. Cities that opt in will coordinate with the county to establish strategies for a smooth transition of services and revenues for the annexations proposed in the accepted Six Year Plan.

2. Each city will submit a written report regarding priority of potential annexation areas to the county council every two years, at which time each city will re-evaluate its time schedule for annexation. This report will serve as an update to the Six Year Annexation Plan.

   The report to the county council should be based upon each city's internal financial analyses dealing with the cost of those annexations identified for action within the immediate two-year time period. This analysis shall include: current and future infrastructure needs including, but not be limited to, arterial roads, surface water management, sewers, and bridges. A special emphasis should be given to the financing of arterial roads, including historical county funding and said roads' priority within the county's current 6-year road plan. Where financing and other considerations are not compelling, the city and county may "re-visit" the annexation strategies at the next two-year interval.

3. To facilitate annexation within urban growth areas (UGAs), the host city and the county may negotiate an Interlocal agreement providing for sub-area planning to guide the adoption of consistent zoning and development regulations between the county and the city. Coordination of zoning densities between the county and the host city may require the revision of land use maps, adoption of transfer rights or other creative solutions. Upon completion of sub-area planning, if densities cannot be reconciled, then the issue would be directed to SCT for review and possible re-assignment to alternate sites within the UGA.

   The Interlocal Agreement would also address development and permit review and related responsibilities within the UGA, apportioning related application fees based upon the review work performed by the respective parties, and any other related matters. The format for accomplishing permit reviews will be guided in part by each city's unique staffing resources as reflected in the Interlocal agreement between the host city and the county.

4. The city and the county will evaluate the financial and service impacts of an annexation to both entities, and will collaborate to resolve inequities between revenues and service provision. The city and county will negotiate on strategies to ensure that revenues and service requirements are balanced for both the city and the county. These revenue sharing and/or service provision strategies shall be determined by individual ILAs to address service operations and capital implementation strategies.

5. The county and the host city will negotiate with other special taxing districts on annexation related issues. Strategies for accomplishing these negotiations will be agreed to by the county and host city, and reflected in the host city's annexation report. (See preceding Principle #2.)

6. To implement the goals of the Annexation Principles regarding revenue sharing, service provision, and permit review transitions, the county and the cities will consider a variety of strategies and tools in developing Interlocal Agreements, including:

   - Inter-jurisdictional transfers of revenue, such as property taxes, Real Estate Excise Taxes (REET), storm drainage fees, sales tax on construction, and retail sales tax. Dedicated accounts may be opened for the deposit of funds by mutual agreement by the county and city;
   - Service provision agreements, such as contracting for service and/or phasing the transition of service from the county to the city;
   - Identifying priority infrastructure improvement areas to facilitate annexation of areas identified in Six Year Annexation Plans.

Appendix Eight

Appendix Eight

INTERLOCAL AGREEMENT BETWEEN THE TOWN OF WOODWAY AND SNOHOMISH COUNTY CONCERNING ANNEXATION AND URBAN DEVELOPMENT WITHIN THE WOODWAY MUNICIPAL URBAN GROWTH AREA

1. PARTIES

This Interlocal Agreement ("Agreement" or "ILA") is made by and between the Town of Woodway ("Town"), a Washington municipal corporation, and Snohomish County ("County"), a political subdivision of the State of Washington, collectively referred to as the "Parties," pursuant to Chapter 36.70A RCW (Growth Management Act) (GMA), Chapter 36.115 RCW (Governmental Services Act), Chapter 43.21C RCW (State Environmental Policy Act), Chapter 36.70B RCW (Local Project Review), Chapter 58.17 RCW (Subdivisions), Chapter 82.02 RCW (Excise Taxes), and Chapter 39.34 RCW (Interlocal Cooperation Act).

2. PURPOSE, INTENT AND APPLICABILITY

2.1 Purpose. The purpose of this Agreement is to facilitate an orderly transition of services and responsibility for capital projects from the County to the Town at the time of annexation of unincorporated areas of the County to the Town. This Agreement between the Town and the County also addresses joint transportation system planning and the policies and procedures for reciprocal review and mitigation of interjurisdictional transportation system impacts of land development.

2.2 Snohomish County Tomorrow Annexation Principles. The County and the Town intend that this Agreement be interpreted in a manner that furthers the objectives articulated in the Snohomish County Tomorrow Annexation Principles; however, in the event of a conflict between such Principles and this Agreement, this Agreement shall prevail. For the purpose of this Agreement, the Snohomish County Tomorrow Annexation Principles means that document adopted by the Snohomish County Tomorrow Steering Committee on February 28, 2007, and supported by the Snohomish County Council in Joint Resolution No. 07-026 passed on September 5, 2007. The Snohomish County Tomorrow Annexation Principles are attached to this Agreement as Exhibit A.

2.3 Establish a framework for future annexations. The Town and County intend that this Agreement provide a framework for future annexations within the Woodway Municipal Urban Growth Area (MUGA), to implement urban development standards within the Woodway MUGA prior to annexation, to plan for and fund capital facilities in the unincorporated portion of the Woodway MUGA, and to enable consistent responses to future annexations.

2.4 Subsequent agreements and interpretations. The Town and County recognize that this Agreement includes general statements of principle and policy, and that addenda or amendments to existing interlocal agreements or government service agreements or subsequent agreements on specific topical subjects relating to annexation and service transition may be executed. By way of example only, and not by way of limitation, the Town and County contemplate that such subsequent amendments or agreements might address the following types of issues: roads and traffic impact mitigation; surface water management; parks, recreation and open space; police services; fire marshal services; permit review services; revenue- and cost-sharing; common zoning and development standards; and sub-area planning. In addition, a subsequent agreement or an addendum to this Agreement might address issues related to the annexation of a specific area. In the event that any term or provision in this Agreement conflicts with any term or provision in any subsequent agreement, addendum or amendment, the term or provision in the subsequent agreement, addendum or amendment shall prevail unless specifically stated otherwise in this Agreement.

2.5 Applicability. This Agreement applies during its term to all annexations by the Town, when the Town elects to pursue such an annexation pursuant to this Agreement, within the geographic areas described below in Subsection 2.6. Nothing herein shall restrict the Town from exercising its rights to pursue an annexation without the benefit of this Agreement, and nothing herein shall restrict the County from opposing such an annexation before the Boundary Review Board.

2.6 Geographic areas eligible for annexation.

2.6.1 Appendix A of the Snohomish County Countywide Planning Policies, as now existing or hereafter amended, identifies the Woodway MUGA in the Southwest County UGA Boundaries Map, attached hereto as Exhibit B of this Agreement (Woodway MUGA). The Town may consider future annexations within the current Woodway MUGA. Future annexations may be phased. "Phase One" annexations may include the area designated as Urban Low Density Residential (ULDR) on the County's future land use map (FLUM) within the current Woodway MUGA, and may include the portion of the railroad right-of-way adjacent to the western edge of the area designated ULDR so that the entire width of railroad right-of-way is included in a Phase One annexation, but not that portion of railroad right-of-way that is bordered by properties designated Urban Village (UV) along both the eastern and western edges. "Phase Two" and other phases of future annexations may include any other areas within the current Woodway MUGA, including areas designated Urban Village (UV) and Urban Industrial (UI) on the FLUM within the current Woodway MUGA. Phase Two and other phases of future annexations conducted by the Town pursuant to this Agreement shall require further negotiation of a separate agreement or agreements as contemplated in Section 15 of this Agreement to address the

more complex issues between the County and the Town related to the proposed development of these areas, unless both parties agree that such an agreement is not necessary.

2.6.2 If the Town proposes any annexation that includes territory located outside of the Woodway MUGA as identified in the Southwest County UGA Boundaries Map as shown on Exhibit B of this Agreement, and the cities adjacent to the affected area and the Town have reached formal agreement on the proposed annexation boundaries, the County may not oppose the annexation based solely on such territory being outside the Woodway MUGA.

2.6.3 If the Town proposes any annexation that includes territory located within another city's MUGA, as identified in the Southwest County UGA Boundaries Map and the city in whose MUGA such territory is located and the Town have reached formal agreement on the proposed annexation boundaries, the County may not oppose the annexation based solely on such territory being included in another city's MUGA.

3. GENERAL PROVISIONS

3.1 Consistency of annexation. If the Snohomish County Council finds that a proposed annexation by the Town within the Woodway MUGA is consistent with this Agreement and the goals and objectives established in RCW 36.93.170 and 36.93.180, that the health, safety and general welfare of Snohomish County citizens is not adversely affected by the annexation, and that an addendum pursuant to Section 15 of this Agreement is completed or is not necessary, the County may not oppose the proposed annexation and may send a letter to the Boundary Review Board in support of the proposed annexation.

3.2 Public facilities and services. The Town and County share a commitment to ensure that public facilities and services which are within the funding capacities of the Town and County will be adequate to serve development within the Woodway MUGA at the time such development is available for occupancy and use without decreasing current service levels below locally established minimum standards.

3.3 Reciprocal mitigation and impact fees. The Town and County believe it is in the best interest of the citizens of both jurisdictions to enable reciprocal imposition of impact mitigation requirements and regulatory conditions for improvements in the respective jurisdictions. Separate interlocal agreements on reciprocal mitigation may be negotiated after the effective date of this Agreement as described in Subsection 2.4 of this Agreement. Whether impact fees can be collected and transferred between the County and the Town will depend, in part, on the circumstances of any individual annexation, the plans of the jurisdictions to

provide improvements for the benefit of the annexed area, and the terms of any subsequent interlocal agreement.

3.4 Joint planning provision. The Town and County recognize the need for joint planning to establish local and regional facilities the jurisdictions have planned or anticipate for the area, to identify ways to jointly provide these facilities, and to identify transition of ownership and maintenance responsibilities as annexations occur. This need may result in mutual ongoing planning efforts, joint capital improvement plans, and reciprocal impact mitigation. By way of example only, and not by way of limitation, joint planning issues may include: planning, design, funding right-of-way acquisition, construction, and engineering for road projects; regional transportation plans; infrastructure coordination; watershed management planning; capital construction and related services; parks, recreation, and open space; permit review services (particularly for urban centers); revenue and cost-sharing; adoption of common zoning and development standards; and sub-area planning.

3.5 Town to adopt County codes and ordinances. The Town agrees to adopt by reference the County codes and ordinances listed in Exhibit C of this Agreement and subject to vesting as described in Subsection 5.6.1 of this Agreement solely for the purpose of allowing the County to process and complete any permits and associated fire inspections issued by the County prior to the effective date of the annexation. Adoption of the County's codes by the Town in no way affects projects applied for under the Town's jurisdiction. The County shall be responsible for providing copies of all the codes and ordinances listed in Exhibit C of this Agreement, in addition to all the updates thereto, to the Woodway Town Clerk, so that the Town Clerk may maintain compliance with RCW 35A.12.140.

3.6 Town and County responsibilities. Within their own jurisdictions, the County and the Town each have responsibility and authority derived from the Washington State Constitution, state statutes, and any local charter to plan for and regulate uses of land and resultant environmental impacts.

3.7 Intergovernmental cooperation for extra-jurisdictional impacts. The Town and the County recognize that land use decisions and transportation planning can have extra-jurisdictional impacts and that intergovernmental cooperation is an effective manner to deal with impacts and opportunities that transcend local jurisdictional boundaries.

3.8 Coordinated planning. The Town and the County recognize that sub-area planning related to interjurisdictional coordination as outlined in the Snohomish County Tomorrow Annexation Principles facilitates the transition of services from the County to the Town in the event of an annexation. Addenda or amendments to existing interlocal agreements or government service agreements, or subsequent agreements on specific topical subjects relating to annexation and

service transition, as described in Subsection 2.4 of this Agreement, will reflect joint planning between the Town and the County relative to the Snohomish County Tomorrow Annexation Principles.

3.9 Taxes, fees, rates, charges, and other monetary adjustments. In reviewing annexation proposals, the Town and County must consider the effect on the finances, debt structure, and contractual obligations and rights of all affected governmental units. Tax and revenue transfers are generally provided for by state statute.

3.10 Wetland mitigation sites and habitat projects. The Town and County share a commitment to ensure the success of wetland mitigation sites and habitat improvement projects. The Town and County agree that both jurisdictions will benefit from the maintenance and monitoring of wetland mitigation sites and habitat improvement projects. If such sites or projects exist in an annexation area, the Town and County agree to enter into an agreement prior to the effective date of the annexation to determine responsibility and costs for maintenance and monitoring of wetland mitigation sites and habitat improvement projects.

4. GROWTH MANAGEMENT ACT ("GMA") AND LAND USE

4.1 Urban density requirements. Except as may be otherwise allowed by law, the Town agrees to adopt land use designations and zones for the annexation areas that will ensure that new residential subdivisions and development will achieve a minimum net density[1] of four dwelling units per acre and that will accommodate within its jurisdiction the population and employment allocation assigned by the County under the GMA for the Town and the Woodway MUGA as established in Appendix B of the Countywide Planning Policies for Snohomish County. Nothing in this Subsection 4.1 shall be deemed as a waiver of the Town's right to appeal the assignment of such population and employment allocation under the GMA.

4.2 Urban Village requirement. Except as may be otherwise allowed by law, the Town agrees to ensure after annexation that the Town comprehensive plan and development regulations will provide the land use designations and zones necessary to support areas that have been designated as an Urban Village by the County in its comprehensive plan prior to annexation. Nothing in this Subsection 4.2 shall be deemed as a waiver of the Town's right to appeal the County's designation, establishment of development regulations or approval of permits applicable to such area.

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[1] For the purposes of this agreement, minimum net density is the density of development excluding roads, drainage detention/retention areas, biofiltration swales, areas required for public use, and critical areas and their required buffers. Minimum net density is determined by rounding up to the next whole unit or lot when a fraction of a unit or lot is 0.5 or greater.

4.3 Imposition of Town standards. The County agrees to encourage land use development project permit applicants within the Woodway MUGA to design projects consistent with the Town's urban design and development standards; however, the Town agrees that the County can require only that an applicant comply with the County's development regulations. The Town agrees to review land use permit applications and may make written recommendations to the County on how proposed new land use land use permit applications could be made consistent with Town standards. When approval of a development project permit is contingent upon extension of water or sewer service provided by the Town, the County agrees to impose only those conditions related to the provision of such service voluntarily negotiated between the property owner or developer and the Town as a condition of a water or sewer contract between the property owner or developer and the Town, provided that the conditions meet minimum County development standards and mitigation conditions. The Town agrees that the County may impose standards and conditions in addition to those that the County would impose under County codes only if the applicant agrees in writing.

4.4 Joint review of permit applications. The Town and County recognize that it is in the best interest of both jurisdictions to engage in the shared review of County permit applications within areas anticipated for annexation. The Town and County agree to consider a potential subsequent agreement relating to shared permit review.

4.5 Joint planning for transit-oriented development implementation. The Town and County agree to cooperate on the development of transit-oriented development regulations and transit supportive policies to implement County and Town comprehensive planning policies.

5. PROCESSING OF PERMITS IN THE WOODWAY MUGA

5.1 Definitions. For the purposes of this Agreement, the following definitions apply:

"Building permit application" shall mean an application for printed permission issued by the authorizing jurisdiction that allows for the construction of a structure, and includes repair, alteration, or addition of or to a structure.

"Associated permit application" shall mean an application for mechanical, electrical, plumbing and/or sign permit for a structure authorized pursuant to a building permit.

"Land use permit application" shall mean an application for any land use or development permit or approval and shall include, by way of example and not by way of limitation, any of the following: subdivisions, planned residential developments, short subdivisions, binding site plans, single family detached units, conditional uses, special uses, rezones, shoreline substantial development permits, urban center development, grading or land disturbing activity permits and variances. A "land use permit application" shall not include a "building permit application" except for non-single family building permits for structures

greater than 4,000 square feet in size.

"Pending permit applications" shall mean all building permit applications, associated permit applications and land use permit applications respecting real property located in an annexation area that are either (i) still under review by the County on the effective date of the annexation, or (ii) for which a decision has been issued but an administrative appeal is pending on the effective date of the annexation.

"Permit review phase" shall mean a discrete stage of or discrete activity performed during a jurisdiction's review of a pending permit application that has a logical starting and stopping point. By way of example, and not by way of limitation, applications for subdivisions and short subdivisions are deemed to have the following permit review phases: (i) preliminary plat approval; (ii) plat construction plan approval; (iii) revision, alteration or modification of a preliminary plat approval; (iv) construction inspection; (v) final plat processing; and (vi) final plat approval and acceptance. When it is not clear which activities related to the review of a particular pending permit application constitute a distinct permit review phase, the County and the Town shall determine same by mutual agreement, taking into account considerations of convenience and efficiency.

5.2 Town consultation on County land use permit applications. After the effective date of this Agreement, the County agrees to give the Town timely written notice and review opportunity related to all land use permit applications inside the Woodway MUGA, as defined in Subsection 5.1 of this Agreement. The County will invite Town staff to attend meetings between County staff and the applicant relating to such permit applications, including pre-application meetings, when required under Snohomish County Code.

5.3 Review of County land use permit applications. All land use permit applications under County jurisdiction in the Woodway MUGA will be reviewed consistent with all applicable laws, regulations, rules, policies and agreements including the applicable provisions of this Agreement, any separate annexation agreements as described in Subsection 2.4, the State Environmental Policy Act (Chapter 43.21C RCW) and the Snohomish County Code.

5.4 Permits issued by County prior to effective date of annexation. All building permits, associated permits and land use permits and approvals respecting real property located in an annexation area that were issued or approved by the County prior to the effective date of an annexation and vested as outlined in Subsection 5.6.1 below shall be given full effect by the Town after the annexation becomes effective. Any administrative appeals of such decisions that are filed after the effective date of the annexation shall be filed with the Town and handled by the Town pursuant to the Town's municipal code.

5.5 Enforcement of County conditions. Any conditions imposed by the County relating to the issuance or approval of any of the permits described in

Subsection 5.4 above shall be enforced by the Town after the effective date of an annexation to the same extent the Town enforces its own permit conditions. The County agrees that it may make its employees available, at no cost to the Town, to provide assistance in enforcement of conditions on permits originally processed and issued by the County.

5.6 Pending permit applications.

5.6.1 Vesting. The County and the Town agree that any complete building permit application, associated permit application or land use permit application respecting real property located in an annexation area that is submitted to the County prior to the effective date of an annexation and that has vested under Washington statutory or common law or the Snohomish County Code shall remain subject to the laws and regulations of the County that were in effect at the time the permit application was deemed complete by the County, notwithstanding any subsequent annexation or change in County Code.

5.6.2 Automatic transfer of authority regarding permits. The County and the Town understand and agree that the police power with respect to real property located in an annexation area automatically transfers from the County to the Town on the effective date of an annexation. The parties understand and agree that it is the police power that provides local jurisdictions with the authority to impose and implement building and land use regulations. Accordingly, the parties understand and agree that, as a matter of law, all responsibility for and authority over pending permit applications automatically transfers from the County to the Town on the effective date of an annexation.

5.6.3 Completing the active phase of review. The County and the Town agree that, to facilitate an orderly transfer of pending permit applications to the Town after the effective date of an annexation, it may be desirable for the County to continue processing all pending permit applications through the completion of the permit review phase that was in progress on the effective date of the annexation. Accordingly, beginning on the effective date of any annexation governed by this Agreement, and upon the Town's request, the County shall act as the Town's agent for the limited purpose of reviewing and processing all pending permit applications until such time as County personnel have completed the permit review phase that was in progress on the effective date of the annexation at issue. Upon completion of such permit review phase with respect to any particular pending permit application, the County shall transfer all materials relating to the pending permit application to the Town. After such transfer, the Town shall perform all remaining permit review and approval activities.

5.6.4 Administrative appeals. The County and the Town agree that it is not desirable for the County's quasi-judicial hearing officers or bodies to act as agents for the Town for the purposes of hearing and deciding administrative appeals of permit

decisions on behalf of the Town, but it is also not desirable to disrupt an administrative appeal that is already in progress on the effective date of an annexation. Accordingly, if the permit review phase that was in progress on the effective date of an annexation was an administrative appeal of a decision made by the County, then that administrative appeal shall be handled as follows: (i) if the appeal hearing has not yet occurred as of the effective date of the annexation, then all materials related to the appeal shall be transferred to the Town as soon as reasonably possible after the effective date of the annexation and the appeal shall be handled by the Town pursuant to the procedures specified in the Town's municipal code; (ii) if the appeal hearing has already occurred as of the effective date of the annexation, but no decision has yet been issued by the County's quasi-judicial hearing officer or body, then the County's quasi-judicial hearing officer or body shall act as an agent for the Town and issue a timely decision regarding the administrative appeal on behalf of the Town; or (iii) if a decision regarding the administrative appeal was issued by the County's quasi-judicial hearing officer or body prior to the effective date of the annexation, but a timely request for reconsideration was properly filed with the County prior to the effective date of the annexation, then the County's quasi-judicial hearing officer or body shall act as an agent for the Town and issue a timely decision on reconsideration on behalf of the Town.

5.6.5 Effect of decisions by the County regarding permit review phases. The Town shall respect and give effect to all decisions made in the ordinary course by the County regarding those permit review phases, as defined in Subsection 5.1, for a pending permit application within an annexed area that are completed by the County prior to the effective date of such annexation, or on behalf of the Town after the effective date of annexation. Nothing herein shall deny the Town its right to appeal, or to continue an existing appeal, of any appealable decision made by the County prior to the effective date of an annexation.

5.6.6 Proportionate sharing of permit application fees. The County and the Town agree to proportionately share the permit application fees for pending permit applications. Proportionate shares will be calculated based on the County's permitting fee schedule. With respect to each pending permit application, the County shall retain that portion of the permit application fees that is allocable to the phases of review completed by the County prior to the effective date of the annexation. In compensation for the County's work in reviewing pending permit applications on behalf of the Town pursuant this Subsection 5.6, the County shall also retain that portion of the permit application fees that is allocable to the phase(s) of review completed by the County while acting as an agent of the Town. Within a reasonable time after the completion of a permit review phase, the County shall transfer to the Town any remaining portion of the permit application fees collected, which shall be commensurate with the amount of work left to be completed with respect to the pending permit application at the time the pending permit application is transferred to the Town.

5.6.7 Dedications or conveyances of real property. The Town and the County acknowledge and agree that after the effective date of an annexation the County Council will have no authority to accept dedications or other conveyances of real property to the public with respect to real property located in the area that has been annexed by the Town. Accordingly, notwithstanding anything to the contrary contained elsewhere in this Section 5, after the effective date of any annexation governed by this Agreement, the approval and acceptance of final plats or other instruments or documents dedicating or conveying to the public an interest in real property located in the annexed area will be transmitted to the Town for acceptance by the Town Council.

5.7 Judicial appeals of permit decisions. The County shall be responsible for defending, at no cost to the Town, any judicial appeals of decisions regarding building permit applications, associated permit applications and/or land use permit applications respecting real property located in an annexation area that were made or issued by the County prior to the effective date of the annexation. The Town shall be responsible for defending, at no cost to the County, any judicial appeals of decisions regarding building permit applications, associated permit applications and/or land use permit applications respecting real property located in an annexation area that are made or issued after the effective date of the annexation, regardless of whether such decisions are made or issued by Town personnel or by the County in its capacity as an agent for the Town pursuant to Subsection 5.6 of this Agreement.

5.8 Permit renewal or extension. After the effective date of annexation, any request or application to renew or extend a building permit, an associated permit or a land use permit respecting real property located in the annexed area shall be submitted to and processed by the Town, regardless of whether such permit was originally issued by the County or the Town.

5.9 Administration of bonds. The County's interest in any outstanding performance security, maintenance security or other bond or security device issued or provided to the County to guarantee the performance, maintenance or completion by a permittee of work authorized by or associated with a permit respecting real property located in an annexation area will be assigned or otherwise transferred to the Town upon the effective date of the annexation if such assignment or transfer is reasonably feasible. If it is not reasonably feasible for the County to transfer any outstanding bond or security device to the Town, whether due to the terms of the bond or security device at issue or for some other reason, then the County shall continue to administer the bond or security device until the first to occur of the following: (i) the work guaranteed by the bond or security device has been properly completed and accepted by the County; (ii) the Town has been provided with an acceptable substitute bond or security device; or (iii) the bond or security device has been foreclosed. For bonds and security devices that the County continues to administer after the

effective date of annexation, the Town shall notify the County when either the work guaranteed by the bond or security device is completed, or when the Town is provided with an acceptable substitute bond or security device, at which time the County shall release the original bond or security device. Should it become necessary to foreclose any bond or security device the County continues to administer after the effective date of annexation, the County and the Town shall cooperate to perform such foreclosure.

5.10 Building and land use code enforcement cases. Any pending building or land use code enforcement cases respecting real property located in an annexation area will be transferred to the Town on the effective date of the annexation. Any further action in those cases will be the responsibility of the Town at the Town's discretion. The County agrees to make its employees available as witnesses at no cost to the Town if necessary to prosecute transferred code enforcement cases. Upon request, the County agrees to provide the Town with copies of any files and records related to any transferred case.

6. RECORDS TRANSFER AND ACCESS TO PUBLIC RECORDS FOLLOWING ANNEXATION

6.1 Records to be transferred. Prior to and following annexation of unincorporated area into the Town, and upon the Town's request in writing, copies of County records relevant to jurisdiction, the provision of government services, and permitting within the annexation area may be copied and transferred to the Town in accordance with the procedure identified in Subsection 6.2 of this Agreement. Said records shall include, but are not limited to, the following records from the Snohomish County Department of Public Works, the Snohomish County Department of Planning and Development Services, and the Business Licensing Department of the Snohomish County Auditor's office: all permit records and files, inspection reports and approved plans, GIS data and maps in both printed and electronic versions, approved zoning files, code enforcement files, fire inspection records, easements, plats, databases for land use, drainage, street lights, streets, regulatory and animal license records, records relating to data on the location, size and condition of utilities, and any other records pertinent to the transfer of services, permitting and jurisdiction from the County to the Town. The County reserves the right to withhold confidential or privileged records. In such cases where the County opts to withhold such records, it shall provide the Town with a list identifying the records withheld and the basis for withholding each record.

6.2 Procedure for copying. The Town records staff shall discuss with the County records staff the types of records identified in Subsection 6.1 of this Agreement that are available for an annexed area, the format of the records, the number of records, and any additional information pertinent to a request of records. Following this discussion, the County shall provide the Town with a list of the

available files or records in its custody. The Town shall select records from this list and request in writing their transfer from the County to the Town. The County shall have a reasonable time to collect, copy, and prepare for transfer of the requested records. All copying costs associated with this process shall be borne by the Town. When the copied records are available for transfer to the Town, the County shall notify the Town and the Town shall arrange for their delivery.

6.3 Electronic data. In the event that electronic data or files are requested by the Town, the Town shall be responsible for acquiring any software licenses that are necessary to use the transferred information.

6.4 Custody of records. The County shall retain permanent custody of all original records. No original records shall be transferred from the County to the Town. As the designated custodian of original records, the County shall be responsible for compliance with all legal requirements relating to their retention and destruction as set forth in Subsection 6.5 of this Agreement.

6.5 Records retention and destruction. The County agrees to retain and destroy all public records pursuant to this Agreement consistent with the applicable provisions of Chapter 40.14 RCW and the applicable rules and regulations of the Secretary of State, Division of Archives and Records Management.

6.6 Public records requests. Any requests for copying and inspection of public records shall be the responsibility of the party receiving the request. Requests by the public shall be processed in accordance with Chapter 42.56 RCW and other applicable law. The Town agrees to withhold from disclosure documents which the County has requested remain confidential and not be disclosed where disclosure is not mandated by law.

7. COUNTY CAPITAL FACILITIES REIMBURSEMENT

7.1 Consultation regarding capital expenditures. The County will consult with the Town in planning for new local and regional capital construction projects within the Woodway MUGA. The County and Town agree to begin consultation regarding existing active County projects within sixty (60) days of approval of this Agreement. Consultation may include discussions between the County and the Town regarding the need for shared responsibilities in implementing capital projects, including the potential for indebtedness by bonding or loans. The Town and County may pursue cooperative financing for capital facilities where appropriate. Interlocal agreements addressing shared responsibilities for capital projects within the MUGA shall be negotiated, where appropriate.

7.2 Continued planning, design, funding, construction, and services for active and future capital projects. Where appropriate, separate interlocal agreements for specific projects may address shared responsibilities for local capital projects and local share of regional capital facilities within the Woodway MUGA and the continued provision of County services relating to the planning, design, funding, property acquisition, construction, and engineering for local capital projects within an annexation area. An annexation addendum under Section 15 of this Agreement would document appropriate interlocal agreements relating to planning, design, funding, property acquisition, construction, and other architectural or engineering services for active and future capital projects within an annexation area.

7.3 Capital facilities finance agreements. The Town and County may discuss project-specific interlocal agreements for major new local capital facility projects and local share of regional capital facilities within the Woodway MUGA. Depending on which jurisdiction has collected revenues, these agreements may include: transfers of future revenues from the Town to the County or from the County to the Town; proportionate share reimbursements from the Town to the County or from the County to the Town; and Town assumption of County debt service responsibility (or County assumption of Town debt service responsibility) for loans or other financing mechanisms for new local capital projects and existing local capital projects with outstanding public indebtedness within the annexation area at the time of annexation. Both parties agree that there should not be any reimbursement for capital facility projects that have already been paid for by the citizens of the annexing area by means such as special taxes or assessments, traffic mitigation, or other applicable funding sources.

7.4 Continuation of latecomers cost recovery programs and other capital facility financing mechanisms. After annexation, the Town agrees to continue administering any non-protest agreements, latecomer's assessment reimbursement programs established pursuant to Chapter 35.72 RCW, or other types of agreements or programs relating to future participation or cost-share reimbursement, in accordance with the terms of any agreement recorded with the Snohomish County Auditor relating to property within the Woodway MUGA. In addition to the recorded documents, the County will provide available files, maps, and other relevant information necessary to effectively administer these agreements or programs. If a fee is collected for administration of any of the programs or agreements described in this Subsection 7.4, the County agrees to transfer a proportionate share of the administration fee collected to the Town, commensurate with the amount of work left to be completed on the agreement. The proportionate share will be based on the County's fee schedule.

8. ROADS AND TRANSPORTATION

8.1 Annexation of County roads and rights-of-way. Except for noncontiguous municipal purpose annexations under RCW 35.13.180 or 35A.14.300, the Town, pursuant to RCW 35A.14.410, agrees to propose annexation of the entire right-of-way of County roads within and adjacent to an annexation boundary. As used in Section 8 of this Agreement, "County road" means "County road" as defined in RCW 36.75.010(6). The Town agrees to assume, and the County agrees to transfer to the Town, full ownership, legal control and maintenance responsibility for County roads, rights-of-way and drainage facilities within the annexed area upon the effective date of annexation, unless otherwise mutually agreed in writing.

8.2 Road maintenance responsibility. Where possible, the Town agrees to annex continuous segments of County road to facilitate economical division of maintenance responsibility and avoid discontinuous patterns of alternating Town and County road ownership. Where annexation of segments of County road are unavoidable, the Town and County agree to consider a governmental services agreement providing for maintenance of the entire County road segment by the jurisdiction best able to provide maintenance services on an efficient and economical basis.

8.3 Road right-of-way connectivity. The Town agrees to allow, within its regulatory authority, connectivity between rights-of-way within areas annexed by the Town pursuant to this Agreement and neighboring properties within the Town and outside of the Town in order to facilitate traffic flow and provide access for public safety. Such connectivity shall be evaluated pursuant to the Town's ordinary and customary standards of review, including but not limited to review of geography, geotechnical conditions, design and level of service standards.

8.4 Traffic Mitigation and Capital Facilities

8.4.1 Reciprocal impact mitigation. The Town and County agree to mutually enforce each other's traffic mitigation ordinances and policies to address multi-jurisdictional impacts under the terms and conditions provided in an *"Interlocal Agreement between Snohomish County and the Town of Woodway on Reciprocal Mitigation of Transportation Impacts,"* which may be adopted in the future if required. In addition to reciprocal impact mitigation, the subagreement may address implementation of common UGA development standards (including access and circulation requirements), level of service standards, concurrency management systems, and other transportation planning issues.

8.4.2 Transfer of road impact fees. The County collects road impact fees pursuant to Chapter 30.66B of the Snohomish County Code. Where the annexation area includes system improvements for which road impact fees have been collected

and which remain programmed for improvements, the County and Town will negotiate transfers of all or a portion of these fees to the Town to construct the improvements. Any issues relating to unbudgeted improvements for the annexation area shall be resolved prior to the transfer of any road impact fees. Road impact fees shall not be transferred to the Town until maintenance and ownership responsibilities of road system improvements have been determined.

8.4.3 Reimbursement for transportation-related capital facilities investment. There will be no reimbursement from the Town to the County for existing capital improvements. However, the County and the Town may agree to develop separate agreements for cost sharing for new capital improvement projects pursuant to Section 7 above.

8.5 Maintenance services. The Town and County agree to evaluate whether an interlocal agreement addressing maintenance of roads, traffic signals, or other transportation facilities will be appropriate. Any County maintenance within an annexation area after the effective date of the annexation will be by separate service agreement negotiated between the Town and County.

9. SURFACE WATER MANAGEMENT

9.1 Legal control and maintenance responsibilities. If an annexation area includes surface water management improvements or facilities (i) in which the County has an ownership interest, (ii) over or to which the County has one or more easements for access, inspection and/or maintenance purposes, and/or (iii) with respect to which the County has maintenance responsibilities, all such ownership interests, rights and responsibilities shall be transferred to the Town by method as appropriate to effect transfer, including but not limited to quit claim deed or bill of sale, by the end of the calendar year in which the annexation becomes effective, except as otherwise negotiated between the Town and County in any subsequent agreements. The County agrees to provide a list of all such known surface water management improvements and facilities to the Town prior to the start of negotiations. If the County's current Annual Construction Program or Surface Water Management Division budget includes major surface water projects in the area to be annexed, the Town and County will determine how funding, construction, programmatic and subsequent operational responsibilities, legal control and responsibilities will be assigned for these improvements, and the timing thereof, under the provisions of RCW 36.89.050, RCW 36.89.120 and all other applicable authorities.

9.2 Taxes, fees, rates, charges and other monetary adjustments. The Town recognizes that service charges are collected by the County for unincorporated areas within designated Watershed Management Areas. Watershed management service charges are collected at the beginning of each calendar year through real property tax statements. Upon the effective date of an

annexation, the Town hereby agrees that the County may continue to collect and, pursuant to Chapter 25.20 SCC and to the extent permitted by law, to apply the service charges collected during the calendar year in which the annexation occurs to the provision of watershed management services designated in that year's budget. These services, which do not include servicing of drainage systems in road rights-of-way, will be provided through the calendar year in which the annexation becomes effective and will be of the same general level and quality as those provided to other property owners subject to service charges in the County. The Town also acknowledges that after annexation, the annexation area becomes Former Watershed Management Area, and properties contained therein become subject to the applicable bond debt service charge provisions of Chapter 25.20 SCC in subsequent years.

9.3 Compliance with NPDES Municipal Stormwater Permit. The parties acknowledge that upon the effective date of any annexation, the annexation area will become subject to the requirements of the Town's stormwater management, and will no longer be subject to the requirements of the County's Phase I NPDES Municipal Stormwater Permit. Notwithstanding the County's continued provision of stormwater management services in an annexation area pursuant to Section 9.2 above, the Town expressly acknowledges, understands and agrees that from and after the effective date of any annexation (i) the Town shall be solely responsible for ensuring the requirements of the Town's stormwater requirements are met with respect to the annexation area, and (ii) any stormwater management services the County continues to provide in the annexation area pursuant to Section 9.2 above will not be designed or intended to ensure or guarantee compliance with the requirements of any NPDES permit that may apply to the Town in the future.

9.4 Access during remainder of calendar year in which annexation occurs. To ensure the County is able to promptly and efficiently perform surface water management services in the annexation area after the effective date of annexation, as described in Subsection 9.2 above, the Town shall provide the County with reasonable access to all portions of the annexation area in which such services are to be performed. Reasonable access shall include, by way of example and not by way of limitation, the temporary closing to traffic of streets, or portions thereof, if such closing is reasonably necessary to perform the service at issue.

9.5 Government service agreements. The County and Town intend to work toward one or more interlocal agreements for joint watershed management planning, capital construction, infrastructure management, habitat/river management, water quality management, outreach and volunteerism, and other related services.

10. PARKS, OPEN SPACE AND RECREATIONAL FACILITIES

10.1 Local or community parks. If an annexed area includes parks, open space or recreational facilities that are listed in the Snohomish County Comprehensive Parks and Recreation Plan (anticipated to be replaced by the Snohomish County Parks and Recreation Element in 2015) as a local or community park, the Town agrees to assume maintenance, operation and ownership responsibilities for the facility upon the effective date of the annexation except when, prior to annexation, the County declares its intention to retain ownership of the park, open space or recreational facility pursuant to Subsection 10.2 of this Agreement.

10.2 County retention of ownership. The County, in its own discretion and after consulting with the Town, will determine whether to retain ownership of a park, open space or recreational facility (collectively "facility") described in Subsection 10.1 of this Agreement based on consideration of the following criteria and consistent with the Snohomish County Comprehensive Parks and Recreation Plan:

- The facility has a special historic, environmental or cultural value to the citizens of Snohomish County, as determined by the Snohomish County Department of Parks and Recreation;
- There are efficiencies with the County's operation or maintenance of the facility;
- The County has made a substantial capital investment in the facility, including but not limited to the purchase of the facility property, the development of the facility, and the construction of the facility;
- There are specialized stewardship or maintenance issues associated with the facility that the County is best equipped to address;
- The facility generates revenue that is part of the larger County park operation budget;
- The facility serves as a regional park or is part of the County's trail system and should remain a part of the County's regional network; and
- Retaining ownership of the facility is consistent with the Snohomish County Tomorrow Annexation Principles.

10.3 Joint planning for parks, recreation and open space. The Town and County may, upon the effective date of this Agreement, establish an interlocal agreement for parks, open space and recreational facilities. Such an interlocal

agreement shall be based upon the Town and County's efforts to provide parks, recreational facilities and open space within the UGA and surrounding area. This agreement shall be consistent with the joint planning efforts of the Town and County under the Snohomish County Tomorrow Annexation Principles, establish the nature and type of facilities the jurisdictions have planned or anticipate for the area, identify ways to jointly provide these services, and identify transition of ownership and maintenance responsibilities as annexations occur. This effort will result in a mutual ongoing planning effort, joint capital improvement plans and reciprocal impact mitigation.

11. POLICE SERVICES

As provided by law, at the effective date of annexation police services responsibility will transfer to the Town. If necessary, the Town and County may agree to discuss the need for developing a contract for police services in order to accommodate the needed transfer of police services within an annexed area and the unincorporated UGA. Upon request of the Town, the Snohomish County Sheriff's Office will provide detailed service and cost information for the area to be annexed. This request to the Sheriff's Office for detailed service and cost information for police contract services does not preclude the Town from seeking additional service and cost information proposals for similar services from other governmental entities. Agreements between the Town and County will be made consistent with RCW 41.14.250 through 41.14.280 and RCW 35.13.360 through 35.13.400.

12. CRIMINAL JUSTICE SERVICES

All misdemeanor crimes that occur within an annexation area prior to the effective date of annexation will be considered misdemeanor crimes within the jurisdiction of Snohomish County for the purposes of determining financial responsibility for criminal justice system services, including but not limited to prosecution, court costs, jail fees and services, assigned counsel, jury and witness fees, and interpreter fees. After the effective date of annexation, the County shall continue, at its cost and expense, to prosecute such misdemeanor crimes to completion in accordance with the then-existing policies, guidelines and standards of the Snohomish County Prosecuting Attorney's Office. On and after the effective date of any annexation, all misdemeanor crimes that occur in the annexation area will be considered crimes within the jurisdiction of the Town for purposes of determining financial responsibility for such criminal justice system services.

13. FIRE MARSHAL SERVICES

13.1 County to complete certain annual fire inspections. The County agrees upon the Town's request, to process and complete only those fire inspections in an annexed area that were scheduled before the effective date of annexation and occur within six months following the effective date of the annexation. All other

inspections will be conducted by the Town.

13.2 County to complete certain fire code enforcement cases. Upon the Town's request, the County will complete through final disposition any fire code enforcement cases within an annexation area pending at the effective date of an annexation. After final disposition, any further action or enforcement will be at the discretion of the Town.

14. STATUS OF COUNTY EMPLOYEES

Subject to Town civil service rules and state law, the Town agrees to consider the hiring of County employees whose employment status is affected by the change in governance of the annexation areas where such County employees make application with the Town per the Town hiring process and meet the minimum qualifications for employment with the Town. The Town's consideration of hiring of affected sheriff department employees shall be governed by the provisions set forth in RCW 35.13.360 through 35.13.400. The County shall in a timely manner provide the Town with a list of those employees expressing a desire to be considered for employment by the Town.

15. ADDENDA AND AMENDMENTS

15.1 Addenda related to annexation. At the discretion of the Parties, an addendum to this Agreement may be prepared for each annexation by the Town to address any issues specific to a particular annexation. The Town and County will negotiate the addendum prior to or during the forty-five (45) day review period following the date the Boundary Review Board accepts the Town's Notice of Intention for the annexation.

15.2 Amendments. The Town and County recognize that amendments to this Agreement may be necessary.

15.3 Process for addending or amending this Agreement. An addendum or amendment to this Agreement must be mutually agreed upon by the Parties and executed in writing. Any addendum or amendment to this Agreement shall be executed in the same manner as this Agreement.

15.4 Additional agreements. Nothing in this Agreement limits the Parties from entering into interlocal agreements on issues not covered by, or in lieu of, the terms of this Agreement.

16. THIRD PARTY BENEFICIARIES

There are no third party beneficiaries to this Agreement, and this Agreement shall not be interpreted to create any third party beneficiary rights.

17. DISPUTE RESOLUTION

Except as herein provided, no civil action with respect to any dispute, claim or controversy arising out of or relating to this Agreement may be commenced until the dispute, claim or controversy has been submitted to a mutually agreed upon mediator. The Parties agree that they will participate in the mediation in good faith, and that they will share equally in its costs. Each jurisdiction shall be responsible for the costs of their own legal representation. Either party may seek equitable relief prior to the mediation process, but only to preserve the status quo pending the completion of that process. The Town and County agree to mediate any disputes regarding the annexation process or responsibilities of the parties prior to any Boundary Review Board hearing on a proposed annexation, if possible.

18. HONORING EXISTING AGREEMENTS, STANDARDS AND STUDIES

In the event a conflict exists between this Agreement and any agreement between the Town and the County in existence prior to the effective date of this Agreement, the terms of this Agreement shall govern the conflict.

19. RELATIONSHIP TO EXISTING LAWS AND STATUTES

This Agreement in no way modifies or supersedes existing state laws and statutes. In meeting the commitments encompassed in this Agreement, all parties will comply with all applicable state or local laws. The County and Town retain the ultimate authority for land use and development decisions within their respective jurisdictions. By executing this Agreement, the County and Town do not intend to abrogate the decision-making responsibility or police powers vested in them by law.

20. EFFECTIVE DATE, DURATION AND TERMINATION

20.1 Effective Date. This Agreement shall become effective following the approval of the Agreement by the official action of the governing bodies of each of the parties hereto and the signing of the Agreement by the duly authorized representative of each of the parties hereto.

20.2 Duration. This Agreement shall be in full force and effect through December 31, 2030. If the parties desire to continue the terms of the existing Agreement after the Agreement is set to expire, the parties may either negotiate a new agreement or extend this Agreement through the amendment process.

20.3 Termination. Either party may terminate this Agreement upon one-hundred eighty (180) days advance written notice to the other party. Notwithstanding termination of this Agreement, the County and Town are responsible for fulfilling any outstanding obligations under this Agreement incurred prior to the effective date of the termination.

21. INDEMNIFICATION AND LIABILITY

21.1 Indemnification of County. The Town shall protect, save harmless, indemnify and defend, at its own expense, the County, its elected and appointed officials, officers, employees, volunteers and agents, from any loss or claim for damages of any nature whatsoever arising out of the Town's performance of this Agreement, including claims by the Town's employees or third parties, except for those damages caused solely by the negligence of the County, its elected and appointed officials, officers, employees, volunteers or agents.

21.2 Indemnification of Town. The County shall protect, save harmless, indemnify, and defend at its own expense, the Town, its elected and appointed officials, officers, employees, volunteers and agents from any loss or claim for damages of any nature whatsoever arising out of the County's performance of this Agreement, including claims by the County's employees or third parties, except for those damages caused solely by the negligence of the Town, its elected and appointed officials, officers, employees, volunteers or agents.

21.3 Extent of liability. In the event of liability for damages of any nature whatsoever arising out of the performance of this Agreement by the Town and the County, including claims by the Town's or the County's own officers, officials, employees, agents, volunteers, or third parties, caused by or resulting from the concurrent negligence of the County and the Town, their officers, officials, employees and volunteers, each party's liability hereunder shall be only to the extent of that party's negligence.

21.4 Hold harmless. No liability shall be attached to the Town or the County by reason of entering into this Agreement except as expressly provided herein. The Town shall hold the County harmless and defend at its expense any legal challenges to the Town's requested mitigation and/or failure by the Town to comply with Chapter 82.02 RCW. The County shall hold the Town harmless and defend at its expense any legal challenges to the County's requested mitigation or failure by the County to comply with Chapter 82.02 RCW.

22. SEVERABILITY

If any provision of this Agreement or its application to any person or circumstance is held invalid, the remainder of the provisions and the application of the provisions to other persons or circumstances shall not be affected.

23. EXERCISE OF RIGHTS OR REMEDIES

Failure of either party to exercise any rights or remedies under this Agreement shall not be a waiver of any obligation by either party and shall not prevent either party from pursuing that right at any future time.

24. RECORDS

The Parties shall maintain adequate records to document obligations performed under this Agreement. The Parties shall have the right to review each other's records with regard to the subject matter of this Agreement, except for privileged documents, upon reasonable written notice. Public records will be retained and destroyed according to Subsection 6.5 of this Agreement.

25. ENTIRE AGREEMENT

This Agreement constitutes the entire Agreement between the Parties concerning annexation within the Woodway MUGA, except as set forth in Subsection 2.4 and Sections 15 and 18 of this Agreement.

26. GOVERNING LAW AND STIPULATION OF VENUE

This Agreement shall be governed by the laws of the State of Washington. Any action hereunder must be brought in the Superior Court of Washington for Snohomish County.

27. CONTINGENCY

The obligations of the Town and County in this Agreement are contingent on the availability of funds through legislative appropriation and allocation in accordance with law. In the event funding is withdrawn, reduced or limited in any way after the effective date of this Agreement, the Town or County may terminate the Agreement under Subsection 20.3 of this Agreement, subject to renegotiation under those new funding limitations and conditions.

28. FILING

A copy of this Agreement shall be filed with the Woodway Town Clerk and posted on the Snohomish County website pursuant to RCW 39.34.040.

29. ADMINISTRATORS AND CONTACTS FOR AGREEMENT

The Administrators and contact persons for this Agreement are:

Eric Faison, Town Administrator
Town of Woodway
Town Hall
23920 113th Place West
Woodway, WA 98020
(206) 542-4443

Frank Slusser, Senior Planner
Snohomish County
Department of Planning and Development Services
3000 Rockefeller Avenue
Everett, WA 98201
(425) 388-3311

IN WITNESS WHEREOF, the parties have signed this Agreement, effective on the later date indicated below.

THE TOWN:

The Town of Woodway, a Washington municipal corporation

By _____
Name: Carla A. Nichols
Title: Mayor

ATTEST:

_____
Town Clerk/Treasurer

Approved as to Form:

_____
Town Attorney for WOT

THE COUNTY:

Snohomish County, a political subdivision of the State of Washington

By _____
Name: DAVE SOMERS
Title: 3/24/16

ATTEST:

_____
~~Clerk of the County Council~~

Approved as to Form:

_____ 3/30/16
Deputy Prosecuting Attorney

Reviewed by Risk Management:
APPROVED ( ) OTHER ( )
Explain.

Signed: _____
Date: 4/7/16

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EXHIBIT A – SNOHOMISH COUNTY TOMORROW ANNEXATION PRINCIPLES

The following principles are intended as a "roadmap" for successful annexations but are not intended to require cities to annex all UGA lands. The desired outcome will reduce Snohomish County's current delivery of municipal services within the urban growth area while strengthening the County's regional planning and coordinating duties. Likewise, cities/towns will expand their municipal services to unincorporated lands scattered throughout the UGAs in Snohomish County. These principles propose altering historical funding and service delivery patterns. All parties recognize that compromises are necessary.

1. The County and all Snohomish County cities will utilize a six-year time schedule which will guide annexation goals. This work will be known as the Six Year Annexation Plan. As follow-up to the county's Municipal Urban Growth Area (MUGA) policies, those cities that have a (MUGA) land assignment, should designate this land assignment a priority. Each jurisdiction shall conduct its normal public process to ensure that citizens from both the MUGA areas and city proper are well informed. All Snohomish County cities have the option of opting in or out of this process. Cities that opt in will coordinate with the county to establish strategies for a smooth transition of services and revenues for the annexations proposed in the accepted Six Year Plan.

2. Each city will submit a written report regarding priority of potential annexation areas to the county council every two years, at which time each city will re-evaluate its time schedule for annexation. This report will serve as an update to the Six Year Annexation Plan.

   The report to the county council should be based upon each city's internal financial analyses dealing with the cost of those annexations identified for action within the immediate two-year time period. This analysis shall include: current and future infrastructure needs including, but not be limited to, arterial roads, surface water management, sewers, and bridges. A special emphasis should be given to the financing of arterial roads, including historical county funding and said roads' priority within the county's current 6-year road plan. Where financing and other considerations are not compelling, the city and county may "re-visit" the annexation strategies at the next two-year interval.

3. To facilitate annexation within urban growth areas (UGAs), the host city and the county may negotiate an Interlocal agreement providing for sub-area planning to guide the adoption of consistent zoning and development regulations between the county and the city. Coordination of zoning densities between the county and the host city may require the revision of land use maps, adoption of transfer rights or other creative solutions. Upon completion of sub-area planning, if

densities cannot be reconciled, then the issue would be directed to SCT for review and possible re-assignment to alternate sites within the UGA.

The Interlocal Agreement would also address development and permit review and related responsibilities within the UGA, apportioning related application fees based upon the review work performed by the respective parties, and any other related matters. The format for accomplishing permit reviews will be guided in part by each city's unique staffing resources as reflected in the Interlocal agreement between the host city and the county.

4. The city and the county will evaluate the financial and service impacts of an annexation to both entities, and will collaborate to resolve inequities between revenues and service provision. The city and county will negotiate on strategies to ensure that revenues and service requirements are balanced for both the city and the county. These revenue sharing and/or service provision strategies shall be determined by individual ILAs to address service operations and capital implementation strategies.

5. The county and the host city will negotiate with other special taxing districts on annexation related issues. Strategies for accomplishing these negotiations will be agreed to by the county and host city, and reflected in the host city's annexation report. (See preceding Principle #2.)

6. To implement the goals of the Annexation Principles regarding revenue sharing, service provision, and permit review transitions, the county and the cities will consider a variety of strategies and tools in developing Interlocal Agreements, including:
    - Inter-jurisdictional transfers of revenue, such as property taxes, Real Estate Excise Taxes (REET), storm drainage fees, sales tax on construction, and retail sales tax. Dedicated accounts may be opened for the deposit of funds by mutual agreement by the county and city;
    - Service provision agreements, such as contracting for service and/or phasing the transition of service from the county to the city;
    - Identifying priority infrastructure improvement areas to facilitate annexation of areas identified in Six Year Annexation Plans.

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EXHIBIT B – WOODWAY MUNICIPAL URBAN GROWTH AREA MAP

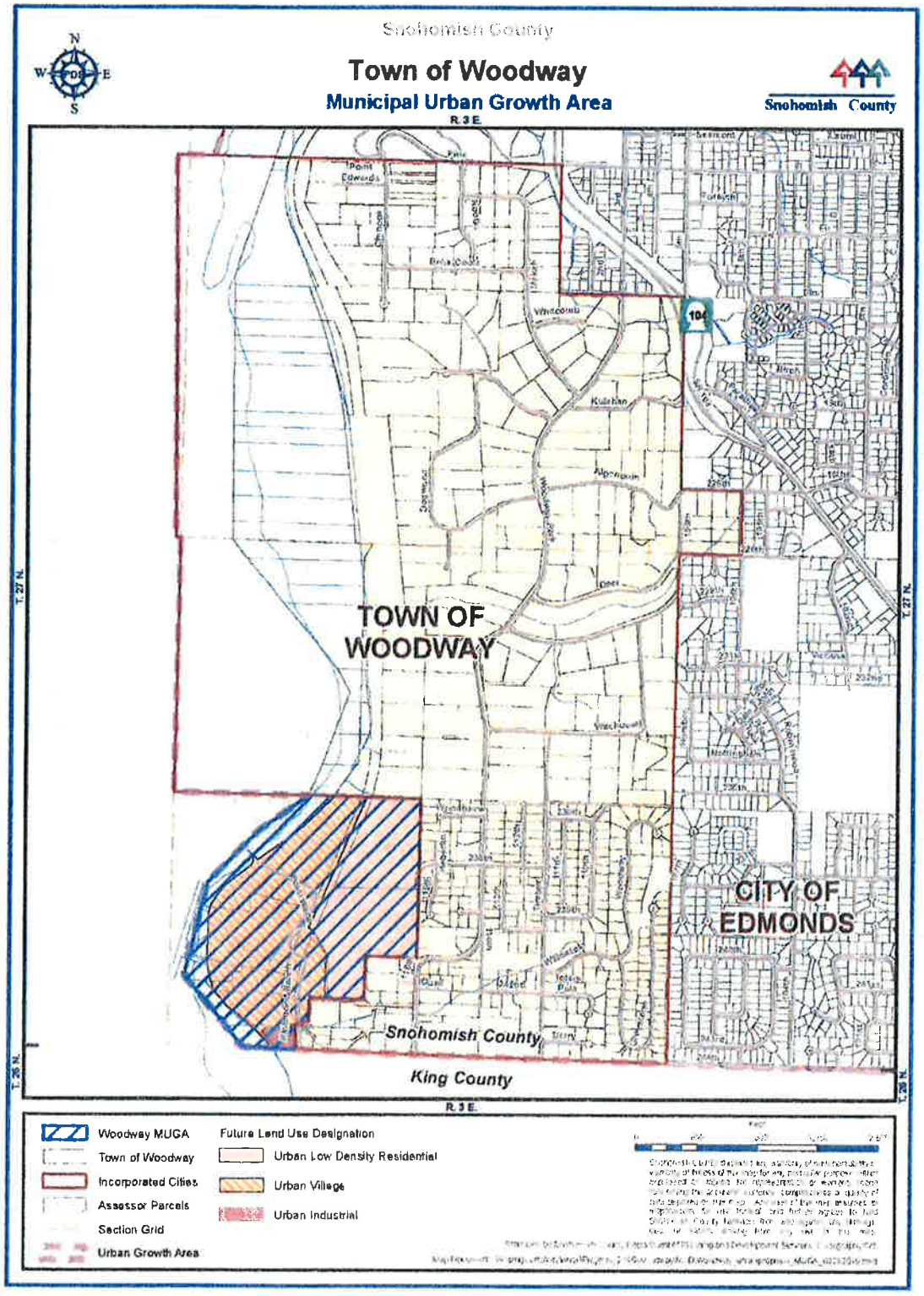

EXHIBIT C – SNOHOMISH COUNTY CODE ("SCC") PROVISIONS AND SNOHOMISH COUNTY ORDINANCES TO BE ADOPTED BY TOWN

A. The following portions of SCC Title 13, entitled ROADS AND BRIDGES: Chapters 13.01, 13.02, 13.05, 13.10 through 13.70, 13.95, 13.110 and 13.130

B. SCC Title 25, entitled STORM AND SURFACE WATER MANAGEMENT

C. SCC Subtitle 30.2, entitled ZONING AND DEVELOPMENT STANDARDS

D. SCC Subtitle 30.3, entitled PERFORMANCE STANDARD ZONES, RESOURCE LANDS AND OVERLAYS

E. SCC Chapter 30.41A, entitled SUBDIVISIONS

F. SCC Chapter 30.41B, entitled SHORT SUBDIVISIONS

G. SCC Chapter 30.42B, entitled PLANNED RESIDENTIAL DEVELOPMENTS

H. SCC Chapter 30.41D, entitled BINDING SITE PLANS

I. SCC Chapter 30.44, entitled SHORELINE MANAGEMENT

J. SCC Chapter 30.51A, entitled DEVELOPMENT IN SEISMIC AREAS

K. SCC Chapter 30.52A, entitled BUILDING CODE

L. SCC Chapter 30.52B, entitled MECHANICAL CODE

M. SCC Chapter 30.52C, entitled VENTILATION AND INDOOR AIR QUALITY CODE

N. SCC Chapter 30.52D, entitled ENERGY CODE

O. SCC Chapter 30.52E, entitled UNIFORM PLUMBING CODE

P. SCC Chapter 30.52F, entitled RESIDENTIAL CODE

Q. SCC Chapter 30.52G, entitled AUTOMATIC SPRINKLER SYSTEMS

R. SCC Chapter 30.53A, entitled FIRE CODE

S. SCC Subtitle 30.6, entitled ENVIRONMENTAL STANDARDS AND MITIGATION

T. SCC Chapter 30.66A, entitled PARK AND RECREATION FACILITY IMPACT MITIGATION

U. SCC Chapter 30.66B, entitled CONCURRENCY AND ROAD IMPACT MITIGATION

V. SCC Chapter 30.66C, entitled SCHOOL IMPACT MITIGATION

W. SCC Chapter 30.67, entitled SHORELINE MASTER PROGRAM

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Appendix Nine

Appendix 9

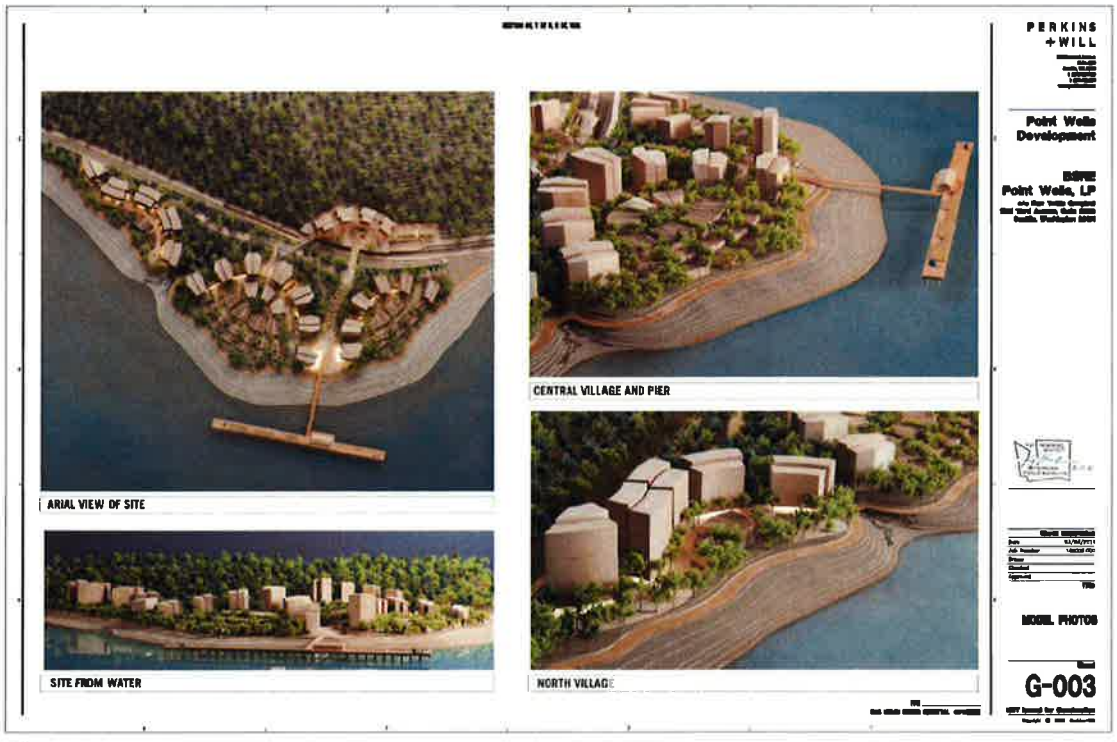
Point Wells

Present Status (as of May 10, 2017)

- On May 10, 2017, Snohomish County provided some preliminary review comments to the applicant. These comments are on revisions to the project that the applicant submitted to Snohomish County on April 17, 2017 (details below under "Milestones"). Full review comments will take more time to complete.
- Snohomish County expects that a revised application, including possible further revisions to be determined at a later date and provided by the applicant, will become a new alternative for study in the Draft Environmental Impact Statement (DEIS). Work on other aspects of the DEIS is on hold until Snohomish County determines that a satisfactory new alternative has been submitted by the applicant.

Overview

Point Wells is a lowland extending into Puget Sound with a proposal by Blue Square Real Estate to redevelop the current industrial uses into 3,081 condominiums plus amenities such as restaurants and public beach access. It is at the extreme southwest corner of Snohomish County, with access to the site from Richmond Beach Drive. Redevelopment would take place in four phases. Each phase would have a single underground parking garage with multiple buildings on top. The image below is from the project application and gives a sense of the overall layout. The total property area is approximately 61 acres, of which 16 acres are tidelands that will remain largely undisturbed and 45 acres are proposed for the redevelopment.



Snohomish County is working with a team of consultants on an Environmental Impact Statement, or EIS, for the redevelopment project. This EIS will evaluate things like traffic impacts, landslide risks, noise, and fiscal impacts from the project on local governments. There will be a Draft EIS (DEIS) published first. Snohomish County will invite the public and various agencies to comment on the DEIS during a formal 45-day comment period after publication. If you would like notification of publication, please send an email to ryan.countryman@snoco.org and request to be a "party-of-record" for Point Wells.

Past Milestones

- April 17, 2017: Blue Square Real Estate responded to Snohomish County's review by submitting revised plans. These revised plans retain the basic overall concept in the original submittal, but add a second access road through the Town of Woodway and make some adjustments internal to the site in response to County comments. The April 2017 resubmittal includes 11 new documents that are now on our Point Wells Documents page that also has many of the original and intermediate documents. Procedurally, the resubmittal includes revisions to the Urban Center Site Plan application and the

Application Documents

Submittal Documents - Applications, Plans, Repo

Project Numbers: 11-101457 LU; 11-101461 SM LDA; 11-101464 RC

Environmental Review Documents

Determination of Significance and Request for C

Second DS and Request for Comments on Scop

Comments Received

Agency, Organization and Public Comments (L

Urban Center Information

Current Snohomish County Code - 30.34
Applicable Snohomish County Code - Urban Cer
Urban Center Application Materials

Related Links

Point Wells Developer's Website
City of Shoreline Point Wells Website

Locate the Project

Point Wells in Google Maps

Draft Environmental Impact Statement for the project.

- April 12, 2013: Snohomish County completed the first review comments, including requests for changes.
- January 7, 2013: Washington State Appeals reversed the ruling that the Point Wells urban center development application was not vested to the Snohomish County codes and ordinances in effect at the time that BSRE (applicant) made application for urban center permits. The judge dismissed the November 2011 injunction barring Snohomish County from processing the urban center application.
- March 4, 2011: Blue Square Real Estate submits three permit applications. Permit 11-101457 LU is a Land Use permit for the proposed urban center site plan. Related to this are 11-101461 SM (a Shoreline Management permit for work in the area regulated under the Snohomish County Shoreline Management Program) and 11-101464 RC (a permit for retaining walls in the slope on the east side of the railroad tracks). Approval for these permits depend on completion of an Environmental Impact Statement.
- February 14, 2011: Blue Square Real Estate submits two applications. Permit 11-101007 SP is a Short Plat application that would revise parcels lines on the site to reflect the proposed phasing. The second permit, 11-101008 LDA, is a Land Disturbing Activity permit that would address grading and other site work to prepare for construction. Approval for both permits depend on completion of an Environmental Impact Statement.

Get Involved

Submit Comments or Become a Party of Record

To submit comments or become a Party of Record for Point Wells, send a letter or an email to Ryan Countryman and include the project file number, project name, and your name and address. Read more about what it Record.

Meetings

Nothing Scheduled at this time.

Questions or comments regarding this web page

FAQS

- What is my zoning?
- My property is zoned "R-5" - what does that mean?
- What are my setback requirements?
- What can I do with my property?
- Who owns the property across the street?
- How do I get a copy of a plat map (subdivision map)?

HELPFUL LINKS

- Snohomish County Home
- Economic Development
- Public Notices
- Fire Marshal
- Public Records
- Permit Zoning Map

CERTIFICATE OF SERVICE

I, Amanda C. Kleiss, declare as follows:

That I am over the age of 18 years, not a party to this action, and competent to be a witness herein;

That I, as paralegal in the office of Van Ness Feldman LLP, caused true and correct copies of the following documents to be delivered as set forth below:

1. Ronald Wastewater District's Petition for Review;
2. Certificate of Service;

and that on August 30, 2019, I caused the foregoing documents to be e-filed and e-served electronically through Washington State Supreme Court's web portal as follows:

City of Shoreline Julie Ainsworth-Taylor Margaret J. King City of Shoreline 17500 Midvale Avenue N. Shoreline, WA 98133	☒ By Portal E-service: jainsworth-taylor@shorelinewa.gov; mking@shorelinewa.gov
Town of Woodway Greg A. Rubstello Ogden Murphy Wallace PLLC 901 Fifth Avenue, Suite 3500 Seattle, WA 98164-2008	☒ By Portal E-service: grubstello@omwlaw.com
Desiree Phair Davis Rothwell Earle & Cochihua 520 Pike Street, Suite 2500 Seattle, WA 98101-3083	☒ By Portal E-service: dphair@davisrothwell.com

Olympic View Water & Sewer District
Philip Albert Talmadge
Thomas M. Fitzpatrick
Talmadge/Fitzpatrick/Tribe
2775 Harbor Avenue SW
3rd Floor, Suite C
Seattle, WA 98126

☒ By Portal E-service:
phil@tal-fitzlaw.com;
tom@tal-fitzlaw.com;
matt@tal-fitzlaw.com

King County
Jennifer Stacy
Verna P. Bromley
Darren E. Carnell
Mark Stockdale
Senior Deputy Prosecuting Attys
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500 Fourth Avenue, Floor 9
Seattle, WA 98104

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paoappellateunitmail@kingcounty.gov;
mark.stockdale@kingcounty.gov;
mary.livermore@kingcounty.gov;
monica.erickson@kingcounty.gov;
robin.hohl@kingcounty.gov

Snohomish County
Brian J. Dorsey
Jessica Kraft-Klehm
Deputy Prosecuting Attorneys
Snohomish County Pros's Office
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M/S 504
Everett, WA 98201-4060

☒ By Portal E-service:
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bdorsey@snoco.org;
jessica.kraft-klehm@co.snohomish.wa.us;
jessica.kraft-klehm@snoco.org;
diane.kremenich@snoco.org

City of Shoreline
Terry Danysh
Dorsey & Whitney LLP
701 5th Ave., Suite 6100
Seattle, WA 98104-7043

☒ By Portal E-service:
danysh.terry@dorsey.com;

City of Edmonds
Sharon Cates
Jeffrey B. Taraday
Beth Ford
Lighthouse Law Group PLLC
1100 Dexter Avenue N., #100
Seattle, WA 98109

☒ By Portal E-service:
sharon@lighthouselawgroup.com;
jeff@lighthouselawgroup.com;
beth@lighthouselawgroup.com;
secates99@gmail.com

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

EXECUTED at Seattle, Washington on this 30th day of August, 2019.

Amanda C. Kleiss, Declarant

VAN NESS FELDMAN LLP

August 30, 2019 - 3:54 PM

Transmittal Information

Filed with Court:	Court of Appeals Division I
Appellate Court Case Number:	78516-8
Appellate Court Case Title:	Ronald Wastewater District, Res. v. Olympic View Water and Sewer District, et al., Apps.

The following documents have been uploaded:

- 785168_Motion_20190830155030D1084078_3293.pdf
  This File Contains:
  Motion 1 - Other
  The Original File Name was 01 Ronald Motion for Overlength.pdf
- 785168_Petition_for_Review_20190830155030D1084078_9447.pdf
  This File Contains:
  Petition for Review
  The Original File Name was 02 Ronald Petition for Review and Attachment.pdf

A copy of the uploaded files will be sent to:

- bdorsey@snoco.org
- beth@lighthouselawgroup.com
- brian.dorsey@co.snohomish.wa.us
- danysh.terry@dorsey.com
- darren.carnell@kingcounty.gov
- diane.kremenich@snoco.org
- dphair@davisrothwell.com
- grubstello@omwlaw.com
- hrl@vnf.com
- jainsworth-taylor@shorelinewa.gov
- jeff@lighthouselawgroup.com
- jennifer.stacy@kingcounty.gov
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- jessica.kraft-klehm@snoco.org
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- mary.livermore@kingcounty.gov
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- phil@tal-fitzlaw.com
- robin.hohl@kingcounty.gov
- secates99@gmail.com
- sharon@lighthouselawgroup.com
- tom@tal-fitzlaw.com
- verna.bromley@kingcounty.gov

Comments:

Motion for Leave to File Over-length Petition for Review

Sender Name: Amanda Kleiss - Email: ack@vnf.com
Filing on Behalf of: Duncan Mcgehee Greene - Email: dmg@vnf.com (Alternate Email: ack@vnf.com)

Address:
719 Second Avenue
Suite 1150
SEATTLE, WA, 98104
Phone: (206) 623-9372

Note: The Filing Id is 20190830155030D1084078